

HOUSE RULES
AND MANUAL

SEVENTIETH CONGRESS

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HOUSE OF REPRESENTATIVES

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CONSTITUTION
JEFFERSON'S MANUAL
AND
RULES OF THE HOUSE OF
REPRESENTATIVES
OF THE UNITED STATES

SEVENTIETH CONGRESS

By

LEHR FESS
PARLIAMENTARIAN



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON

1927

JEFFERSON'S MANUAL
OF THE CONSTITUTION

RULES OF THE HOUSE OF
REPRESENTATIVES

OF THE UNITED STATES

SEVENTIETH CONGRESS

RESOLUTION OF THE HOUSE, MARCH 2, 1927.

House Resolution 449.

Resolved, That the Constitution, Manual, Rules, and Practices of the House of Representatives for the Seventieth Congress be printed as a House document, and that 2,500 copies be printed and bound for the use of the House of Representatives.



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON

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Vol 3 C
1927

PREFACE.

The rules of the House of Representatives are probably the best considered, most scientifically constructed, finely adjusted, and highly technical rules governing any parliamentary body. In the nature of things it is impossible to bring each of the many thousands of measures introduced before the House for consideration. Nevertheless the rules are so adjusted that while matters of major general importance are given the right of way many matters of less importance are disposed of under provisions for call of committees and the Consent Calendar, and in the face of most vigorous opposition a majority are enabled to secure final action on measures in a very short space of time.

The only major change found in this edition is the elimination of the Committees on Railways and Canals, Alcoholic Liquor Traffic, Mileage, Industrial Arts and Expositions, Woman Suffrage, and the 11 committees on expenditures in the several executive departments, and the creation of a new Committee on Expenditures in the Executive Departments. The membership on a number of committees has been increased to 21. The notes have been changed in so far as recent decisions have made it necessary. References are to Hinds' Precedents, the Congressional Record, and the Supreme Court Reporter.

LEHR FESS.

DECEMBER 7, 1927.

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- First. Prayer by Chaplain.
- Second. Reading and approval of Journal.
- Third. Correction of reference of public bills.
- Fourth. Disposal of business on Speaker's table.
- Fifth. Unfinished business.
- Sixth. The morning hour for the consideration of bills.
- Seventh. Motion to go into the Committee of the Whole House on the state of the Union.
- Eighth. Orders of the day.

SPECIAL ORDER OF BUSINESS.

MONDAYS.

On first and third Mondays:

- First. Motions to instruct committees. Rule XXVII, clause 4.
- Second. Consent Calendar. Rule XIII, clause 3.
- Third. Motions to suspend rules. Rule XXVII, clause 1.

Second and fourth Mondays:

- First. District of Columbia business. Rule XXIV, clause 8.

WEDNESDAYS.

Call of committees under Calendar Wednesday. Rule XXIV, clause 7.

FRIDAYS.

Bills on the Private Calendar. Rule XXIV, clause 6.

Second and fourth private pensions. Except second and fourth private claims.

CONSTITUTION.

CONSTITUTION OF THE UNITED STATES: 1787.

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

Decisions of the Supreme Court of the United States relating to the preamble are:

§ 1. The preamble. *Chisholm v. Georgia*, 2 Dall., 419; *McCulloch v. State of Maryland et al.*, 4 Wh., 316; *Brown et al. v. Maryland*, 12 Wh., 419; *Barron v. The Mayor and City Council of Baltimore*, 7 Pet., 243; *Dred Scott v. Sanford*, 19 Howard, 393; *Lane County v. Oregon*, 7 Wall., 71; *Texas v. White et al.*, 7 Wall., 700; *Claffin v. Houseman, assignee*, 93 U. S., 130; *Williams v. Bruffy*, 96 U. S., 176; *Tennessee v. Davis*, 100 U. S., 257; *Langford v. United States*, 101 U. S., 341; *United States v. Jones*, 109 U. S., 513; *Fort Leavenworth Railroad Co. v. Lowe*, 114 U. S., 525; *The Chinese Exclusion Case*, 130 U. S., 581; *Geofroy v. Riggs*, 133 U. S., 258; *In re Neagle*, 135 U. S., 1; *In re Ross*, 140 U. S., 453; *Logan v. United States*, 144 U. S., 263; *Lascelles v. Georgia*, 148 U. S., 537; *Fong Yue Ting v. United States*, 149 U. S., 698; *In re Tyler*, 149 U. S., 164; *United States v. E. C. Knight Co.*, 156 U. S., 1; *Mattox v. United States*, 156 U. S., 237; *In re Quarles and Butler*, 158 U. S., 532; *In re Debs, Petitioner*, 158 U. S., 564; *Ward v. Race Horse*, 163 U. S., 504; *De Lima v. Bidwell*, 182 U. S., 1; *Prout v. Starr*, 188 U. S., 537; *Jacobson v. Massachusetts*, 197 U. S., 11; *South Carolina v. United States*, 199 U. S., 437; *Ellis v. U. S.*, 206 U. S., 246; *Dick v. U. S.*, 208 U. S., 340; *Muller v. Oregon*, 208 U. S., 412.

CONSTITUTION OF THE UNITED STATES.

§§ 3-6.

ARTICLE I.

SECTION. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

§ 3. Legislative powers vested in Congress.

Decisions of the Supreme Court of the United States:

§ 4. Decisions of the court. Hayburn's case (notes), 2 Dall., 409; *Field v. Clark*, 143 U. S., 649; *Union Bridge Co. v. United States*, 204 U. S., 364; *United States v. Heinszen*, 206 U. S., 370; *St. Louis & Iron Mountain Railway v. Taylor*, 210 U. S., 281; *Monongahela Bridge Co. v. United States*, 216 U. S., 177; *United States v. Grimaud*, 216 U. S., 614; *United States v. Grimaud*, 220 U. S., 506; *U. S. v. Atchison*, etc., R. Co., 234 U. S., 476; *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S., 194; *Kansas City Southern R. Co. v. U. S.*, 231 U. S., 423; *Bay City First Nat. Bank v. Union Trust Co.*, 244 U. S., 416; *Hannibal Bridge Co. v. U. S.*, 221 U. S., 194; *Light v. U. S.*, 220 U. S., 523; *Standard Oil Co. v. U. S.*, 221 U. S., 1; *Union Pacific R. Co. v. Snow*, 231 U. S., 204; *Johannessen v. U. S.*, 225 U. S., 227.

§ 5. Members chosen by people of the States every second year.

SECTION. 2. ¹The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, * * *.

This clause requires election by the people and State authority may not determine a tie by lot (I, 775).

The term of a Congress begins on the 4th of March of the odd numbered years and extends through two years. This results from the action of the Continental Congress on September 13, 1788, in declaring, on authority conferred by the Federal Convention, "the first Wednesday in March next" to be "the time for commencing proceedings under the said Constitution." This date was the 4th of March, 1789. And soon after the first Congress assembled a joint committee determined that the terms of Representatives and Senators of the first class commenced on that day, and must necessarily terminate with the 3d of March, 1791 (I, 3). By a practice having the force of common law, the House meets at 12 m. when no other hour is fixed (I, 4, 210), and as legislative rather than calendar days are observed by the Houses of Congress, it has followed that the 3d of March must extend to the hour of 12 m. on March 4, and this hour has been fixed as that on which a Con-

gress expires (V, 6694-6697). Although the last session may be adjourned before that hour (V, 6724, footnote), in practice this does not happen; and the Speaker at the hour of 12 m., March 4, usually declares the House adjourned sine die, without motion or vote, even interrupting a pending roll call (V, 6715-6718). But a motion to adjourn may be put and carried (V, 6711-6713).

SECTION. 2. * * * and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

§ 7. Electors of the House of Representatives.

The House, in the decision of an election case, has rejected votes cast by persons not naturalized citizens of the United States, although they were entitled to vote under the statutes of a State (I, 811); but where an act of Congress had provided that a certain class of persons should be deprived of citizenship, a question arose over the proposed rejection of their votes in a State wherein citizenship in the United States was not a qualification of the elector (I, 451). In an exceptional case the House rejected votes cast by persons lately in armed resistance to the Government, although by the law of the State they were qualified voters (I, 448); but later, the House declined to find persons disqualified as voters because they had formerly borne arms against the Government (II, 879).

§ 8. Decisions of the court.

Decisions of the Supreme Court of the United States. Ex parte Yarbrough, 110 U. S., 651; Wiley v. Sinkler, 179 U. S., 58; U. S. v. Mosley, 238 U. S., 383.

§ 9. Age as a qualification of the Representative.

² No person shall be a Representative who shall not have attained to the Age of twenty-five Years, * * *.

A Member-elect not being of the required age, he was not enrolled by the Clerk and he did not take the oath until he had reached the required age (I, 418).

§ 10. Citizenship as a qualification of the Member.

* * * and been seven Years a Citizen of the United States, * * *.

A native of South Carolina, who had been abroad during the Revolution and on his return had not resided in the country seven years, was held to be qualified as a citizen (I, 420). A Member who had long been a resident of the country, but who could produce neither the record of the court nor his final naturalization papers, was nevertheless retained in his seat by the House (I, 424).

§§ 11, 12.

* * * and who shall not, when
elected, be an Inhabitant of that State
in which he shall be chosen.

§ 11. Inhabitaney
as a qualification of
the Member.

The meaning of the word "inhabitant" and its relation to citizenship has been discussed (I, 366, 434), and the House has held that a mere sojourner in a State was not qualified as an inhabitant (I, 369), but a contestant was found to be an actual inhabitant of the State although for sufficient reason his family resided in another State (II, 1091). Residence abroad in the service of the Government does not destroy inhabitancy as understood under the Constitution (I, 433). One holding an office and residing with his family for a series of years in the District of Columbia exclusively was held disqualified to sit as a Member from the State of his citizenship (I, 434); and one who had his business and a residence in the District of Columbia and had no business or residence in Virginia was held ineligible to a seat from that State (I, 436). One who had a home in the District of Columbia, and had inhabited another home in Maryland a brief period before his election, but had never been a citizen of any other State, was held to be qualified (I, 432). Also a Member who had resided a portion of a year in the District of Columbia, but who had a home in the State of his citizenship and was actually living there at the time of the election, was held to be qualified (I, 435).

It has been decided by the House and Senate that no State may add to the qualifications prescribed by the Constitution other than those specified by the Constitution. (I, 414-416, 632). Whether Congress may by law establish qualifications other than those prescribed by the Constitution has been the subject of much discussion (I, 449, 451, 457, 458, 478); but in a case wherein a statute declared a Senator convicted of a certain offense "forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States," the Supreme Court expressed the opinion that the final judgment of conviction did not operate, ipso facto, to vacate the seat or compel the Senate to expel or regard the Senator as expelled by force alone of the judgment (II, 1282). Whether the House alone may set up qualifications other than those of the Constitution has also been a subject often discussed (I, 414, 415, 443, 457, 458, 469, 481, 484). The Senate has always declined to act on the supposition that it had such a power (I, 443, 483), and during the stress of civil war the House of Representatives declined to exercise the power, even under circumstances of great provocation (I, 449, 465). But later, in one instance, the House excluded a Member-elect

on the principal argument that it might itself prescribe a qualification not specified in the Constitution (I, 477).

Both Houses of Congress have decided, when a Member-elect is found to be disqualified, that the person receiving the next highest number of votes is not entitled to the seat (I, 323, 326, 450, 454, 463, 469), even in a case wherein seasonable notice of the disqualification was given to the electors (I, 460).

§ 13. Minority candidate not seated when returned Member is disqualified.

Decisions of the Supreme Court of the United States:

Texas v. White, 7 Wall., 721; Boyd v. Nebraska, 143 U. S., 135; U. S. v. Wong Kim Ark, 169 U. S., 649.

³ [Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] * * *

§ 14. The old provision for apportionment of Representatives and direct taxes.

This provision was changed after the civil war by section 2 of the Fourteenth Amendment.

* * * The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Penn-

§ 15. Census as a basis of apportionment.

CONSTITUTION OF THE UNITED STATES.

§§ 16-18.

sylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Notwithstanding the constitutional provision for the taking of a census every tenth year, no apportionment has been made since the act of August 8, 1911, under which the House of Representatives is composed of 435 Members.

Decisions of the Supreme Court of the United States:

Dred Scott v. Sandford, 19 Howard, 393; *Veazie Bank v. Fenno*, 8 Wall., 533; *Scholey v. Rew*, 23 Wall., 331; *De Treville v. Smalls*, 98 U. S., 517; *Gibbons v. District of Columbia*, 116 U. S., 404; *Pollock v. Farmers' Loan & Trust Co.* (Income Tax case), 157 U. S., 429; *Pollock v. Farmers' Loan & Trust Co.* (Rehearing), 158 U. S., 601; *Thomas v. United States*, 192 U. S., 363; *Flint v. Stone Tracy Co.*, 220 U. S., 107; *Corporation Tax cases*, 220 U. S., 107; *Eisner v. Macomber*, 252 U. S., 189; *New York Trust Co. v. Eisner*, 256 U. S., 345.

✓ § 16. Decisions of the court. ⁴ When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such vacancies.

§ 17. Writs for elections to vacancies in representation.

Vacancies are caused by death, resignation, declination, withdrawal, or by action of the House in declaring a vacancy as existing or causing one by expulsion.

It was long the practice to notify the executive of the State when a vacancy was caused by the death of a Member during a session (II, 1198-1202); but since improvements in transportation have made it possible for deceased Members to be buried at their homes it has been the practice for State authorities to take cognizance of the vacancies without notice. When a Member dies while not in attendance on the House or during a recess the House is sufficiently informed of the vacancy by the credentials of his successor, when they set forth the fact of the death (I, 568). The death of a Member-elect creates a vacancy, although no certificate may have been awarded (I, 323), and in such a case the candidate having the next highest number of votes may not receive the credentials (I, 323). A Member whose seat was contested dying, the House did not admit a claimant with credentials until contestant's claim was settled (I, 326); and where a contestant died after a report in his favor, the House unseated the returned Member and declared the seat vacant (II, 596).

§ 18. Vacancy from death.

In recent practice the Member frequently informs the House by letter that his resignation has been sent to the State executive (II, 1167-1176) and this is satisfactory evidence of the resignation (I, 567). And where he does not inform the House the State executive may do so (II, 1193, 1194). But sometimes the House learns of a Member's resignation only by means of the credentials of his successor (II, 1195, 1356). Where the fact of a Member's resignation has not appeared either from the credentials of his successor or otherwise, the Clerk has been ordered to make inquiry (II, 1209), or the House has ascertained the vacancy from information given by other Members (II, 1208). It has been established that a Member or Senator may resign, appointing a future date for his resignation to take effect, and until the arrival of the date may participate in the proceedings (II, 1220-1225, 1228, 1229). A Member who had resigned was not permitted by the House to withdraw the resignation (II, 1213). Only in a single exceptional case has the House taken action in the direction of accepting a resignation (II, 1214). Sometimes Members who have resigned have been reelected to the same House and taken seats (II, 1210-1212, 1256). A Member who has not taken his seat has resigned (II, 1231). A letter of resignation is presented as privileged (II, 1167-1176); but a resolution to permit a Member to withdraw his resignation was not so treated (II, 1213).

A Member who has been elected to a seat may decline to accept it, and in such a case the House informed the executive of the State of the vacancy (II, 1234). The House has decided an election contest against a returned Member who had not appeared to claim the seat (I, 638). In one instance a Member-elect who had been convicted in the courts did not appear during the term (IV, 4484, footnote).

At the time of the secession of several States Members of the House from those States withdrew (II, 1218). In the Senate, in cases of such withdrawals, the Secretary was directed to omit the names of the Senators from the roll (II, 1219), and the act of withdrawal was held to create a vacancy which the legislature might recognize (I, 383).

Where the House, by its action in a question of election or otherwise, creates a vacancy, the Speaker is directed to notify the Executive of the State (I, 502, 709, 824; II, 1203-1205). A resolution as to such notification is presented as a question of privilege (III, 2589).

§ 19. Vacancy from resignation.

§ 20. Vacancy from declination.

§ 21. Vacancy by withdrawal.

§ 22. Vacancy by action of the House.

CONSTITUTION OF THE UNITED STATES.

§§ 23-27.

The House declines to give prima facie effect to credentials, even though they be regular in form, until it has ascertained whether or not the seat is vacant (I, 322, 518, 565, 569), and a person returned as elected at a second election was unseated on ascertainment that another person had actually been chosen at the first election (I, 646).

The term "vacancy" as occurring in this paragraph of the Constitution has been examined in relation to the functions of the state executive (I, 312, 518). A federal law empowers the States and Territories to provide by law the times of elections to fill vacancies (I, 516); but an election called by a governor in pursuance of constitutional authority was held valid although no state law prescribed time, place, or manner of such election (I, 517). Where two candidates had an equal number of votes, the governor did not issue credentials to either, but ordered a new election after they had waived their respective claims (I, 555).

§ 25. Term of a Member elected to fill a vacancy. A Member elected to fill a vacancy serves no longer time than the remainder of the term of the Member whose place he fills (I, 3).

§ 26. House chooses the Speaker and other officers. ⁵ The House of Representatives shall choose their Speaker and other Officers;

* * *

The officers of the House are the Speaker, who has always been one of its Members and whose term as Speaker must expire with his term as a Member; and the Clerk, Sergeant-at-Arms, Doorkeeper, Postmaster, and Chaplain (I, 187), no one of whom has ever been chosen from the membership of the House, and who continue in office until their successors are chosen and qualified (I, 187), in one case continuing through the entire Congress succeeding that in which they were elected (I, 244, 263). The House formerly provided by special rule that the Clerk should continue in office until another should be chosen (I, 187, 188, 235, 244); and in later years the statutes have imposed on the Clerk, Sergeant-at-Arms, and Doorkeeper duties which contemplate their continuance (I, 14, 15).

The Speaker, who was at first elected by ballot, has been chosen by viva voce vote since 1839 (I, 187). In 1809 the House held that a Speaker should be elected by a majority of all present (I, 215); and in 1879 it was held that a majority of all the membership of the House was not required, but only a majority of those present if a quorum (I, 216). On two occasions, by special rule,

§ 27. The vote on election of a Speaker.

CONSTITUTION OF THE UNITED STATES.

§§ 28-32.

Speakers were chosen by a plurality of votes; but in each case the House by majority vote adopted a resolution declaring the result (I, 221, 222). The House has declined to choose a Speaker by lot (I, 221).

The Speaker having died during the recess of Congress, the Clerk at the next session called the House to order, ascertained the presence of a quorum, and then the House proceeded to elect a successor (I, 234). Speakers have resigned by rising in their place and addressing the House (I, 231, 233), by calling a Member to the Chair and tendering the resignation verbally from the floor (I, 225), or by sending a letter which the Clerk read to the House at the beginning of a new session (I, 232). When the Speaker resigns no action of the House excusing him from service is taken (I, 232). In one instance a Speaker resigned on the last day of the Congress, and the House elected a successor for the day (I, 225).

§ 28. Vacancies in the office of Speaker.

The effect of a law to regulate the action of the House in choosing its own officers has been discussed (IV, 3819), and such a law has been considered of doubtful validity (V, 6765, 6766) in theory and practice (I, 241, 242).

The office of Clerk becoming vacant, it was held that the House would not be organized for business until a Clerk should be elected (I, 237); but in another instance some business intervened before a Clerk was elected (I, 239). At the time of organization, while the Clerk of the preceding House was yet officiating, and after the Speaker had been elected, the House proceeded to legislation and other business before electing a Clerk (I, 242, 244). But in one case it was held that the law of 1789 bound the House to elect the Clerk before proceeding to business (I, 241).

§ 30. Election of Clerk in relation to business.

§ 31. House of Representatives alone impeaches.

* * * and [the House of Representatives] shall have the sole Power of Impeachment.

In 1868 the Senate ceased in its rules to describe the House, acting in an impeachment, as the "grand inquest of the nation." (III, 2126.)

SECTION 3. ¹ The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

§ 32. Numbers, terms, and votes of Senators.

This provision has now been changed by the Seventeenth Amendment to the Constitution. (Sec. 276.)

§§ 33-35.

² Immediately after they shall be assembled in

§ 33. Division of
the Senate into
classes.

Consequence of the first Election, they shall be divided as equally as may be into three classes. The Seats of the

Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that

§ 34. Filling of vacancies in the
Senate.

one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the

Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

³ No person shall be a Senator who shall not have

§ 35. Qualifications
of Senators.

attained to the Age of thirty Years, and been nine Years a Citizen of the United

States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

In 1794 the Senate decided that Albert Gallatin was disqualified, not having been a citizen nine years although he had served in the war of Independence and was a resident of the country when the Constitution was formed (I, 428); and in 1849 that James Shields was disqualified, not having been a citizen for the required time (I, 429). But in 1870 the Senate declined to examine as to H. R. Revels, a citizen under the recently adopted fourteenth amendment (I, 430). As to inhabitancy the Senate seated one who, being a citizen of the United States, had been an inhabitant of the State from which he was appointed for less than a year (I, 437). Also one who, while stationed in a State as an army officer had declared his intention of making his home in the State, was admitted by the Senate (I, 438). A Senator who at the time of his election was actually residing in the District of Columbia as an officeholder, but who voted in his old home

and had no intent of making the District his domicile, was held to be qualified (I, 439).

§ 36. The Vice-President and his vote. ⁴ The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The right of the Vice-President to vote has been construed to extend to questions relating to the organization of the Senate (V, 5975), as the election of officers of the Senate (V, 5972-5974), or a decision on the title of a claimant to a seat (V, 5976, 5977). The Senate has declined to make a rule relating to the vote of the Vice-President (V, 5974).

§ 37. Choice of President pro tempore and other officers of the Senate. ⁵ The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

§ 38. Senate tries Impeachment and convicts by two-thirds vote. ⁶ The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

In 1868, after mature consideration, the Senate overruled the old view of its functions (III, 2057), and decided that it sat for impeachment trials as the Senate and not as a court (III, 2057), and eliminated from its rules all mention of itself as a "high court of impeachment" (III, 2079, 2082).

An anxiety lest the Chief Justice might have a vote in the approaching trial of the President seems to have prompted this action (III, 2057). There was examination of the question of the Chief Justice's power to vote (III, 2098); but the Senate declined to declare his incapacity to vote, and he did in fact give a casting vote on incidental questions (III, 2067). The Senate

§ 39. The presiding officer.

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declined to require that the Chief Justice be sworn when about to *preside* (III, 2080); but the Chief Justice had the oath administered by an associate justice (III, 2422.)

In impeachments for officers other than the President of the United States the presiding officer of the Senate presides, whether he be Vice-President, the regular President *pro tempore* (III, 2309, footnote, 2337, 2394) or a special President *pro tempore* chosen to preside at the trial only (III, 2089, 2477).

Senators elected after the beginning of an impeachment trial are sworn as in the case of other Senators (III, 2375). The quorum of the Senate sitting for an impeachment trial is a quorum of the Senate itself, and not merely a quorum of the Senators sworn for the trial (III, 2063). In 1868, when certain States were without representation, the Senate declined to question its competency to try an impeachment case (III, 2060).

§ 40. Oath, and quorum.

⁷ Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

§ 41. Judgment in cases of impeachment.

There has been discussion as to whether or not the Constitution requires both removal and disqualification on conviction (III, 2397); but in the case of Pickering the Senate decreed only removal (III, 2341). In the case of Humphreys judgment of both removal and disqualification was pronounced (III, 2397). The question on removal and disqualification has been held divisible for the vote (III, 2397).

Decisions of the Supreme Court of the United States:

Langford v. U. S., 101 U. S., 342; *Kilbourn v. Thompson*, 103 U. S., 190; *Legal Tender cases*, 12 Wall., 535.

SECTION 4. ¹The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

§ 42. Times, places, and manner of elections of Representatives and Senators.

The relative powers of the Congress and the States under this paragraph have been the subject of much discussion (I, 311, 313, 507, footnote); but Congress has in fact fixed by law the time of elections (I, 508) (also, 38 Stat. L., 384), and has controlled the manner to the extent of prescribing a ballot or voting machine (II, 961). When a State delegated to a municipality the power to regulate the manner of holding an election, a question arose (II, 975). Whether or not a State, in the absence of action by Congress, might make the time of election of Congressmen contingent on the time of the state election (I, 522). This paragraph does not give Congress power to regulate party primaries or conventions for designating candidates for the Senate. (*Newberry v. U. S.*, 256 U. S., 232.)

The meaning of the word "legislature" in this clause of the Constitution has been the subject of discussion (II, 856), as to whether or not it means a constitutional convention as well as a legislature in the commonly accepted meaning of the word (I, 524). The House has sworn in Members chosen at an election the time, etc., of which was fixed by the schedule of a constitution adopted on that election day (I, 519, 520, 522). But the House held that where a legislature has been in existence a constitutional convention might not exercise the power (I, 363, 367). It has been argued generally that the legislature derives the power herein discussed from the Federal and not the State Constitution (II, 856, 947), and therefore that the state constitution might not in this respect control the state legislature (II, 1133). The House has sustained this view by its action (I, 525). But where the state constitution fixed a date for an election and the legislature had not acted, although it had the opportunity, the House held the election valid (II, 846).

Decisions of the Supreme Court of the United States:

§ 44. Decisions of the court. Ex parte Siebold, 100 U. S., 371; Ex parte Clarke, 100 U. S., 399; Ex parte Yarbrough, 110 U. S., 651; United States v. Waddell et al., 112 U. S., 76; In re Coy, 127 U. S., 731; Ohio v. Hildebrant, 241 U. S., 565; U. S. v. Mosley, 238 U. S., 383; U. S. v. Gradwell, 243 U. S., 476; *Newberry v. U. S.*, 256 U. S., 232.

2 The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by law appoint a different Day.

§ 45. Annual meeting of Congress.

In the later but not the earlier practice (I, 5) the fact that Congress has met once within the year does not make uncertain the constitutional mandate to meet on the first Monday of December (I, 6, 9-11). Early Congresses, convened either by proclamation or law on a day earlier than the constitu-

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tional day, remained in continuous session to a time beyond that day (I, 6, 9-11). But in the later view an existing session ends with the day appointed by the Constitution for the regular annual session (II, 1160). Congress has frequently appointed by law a day for the meeting (I, 4, 5, 10-12, footnote).

§ 46. House the
judge of elections,
returns, and
qualifications.

SECTION 5. ¹ Each House shall be the
Judge of the Elections, Returns and
Qualifications of its own Members,
* * *

The House has the same authority to determine the right of a Delegate to his seat that it has in the case of a Member (I, 423). The House may not delegate the duty of judging its elections to another tribunal (I, 608), and the courts of a State have nothing to do with it (II, 959). The House has once examined the relations of this power to the power to expel (I, 469).

As nearly all the laws governing the elections of Representatives in Congress are State laws, questions have often arisen as to the relation of this power of judging to those laws (I, 637). The House decided very early that the certificate of a state executive issued in strict accordance with state law does not prevent examination of the votes by the House and a reversal of the return (I, 637). The House has also held that it is not confined to the conclusions of returns made up in strict conformity to state law, but may examine the votes and correct the returns (I, 774); and the fact that a state law gives canvassers the right to reject votes for fraud and irregularities does not preclude the House from going behind the returns (II, 887).

When the question concerns not the acts of returning officers, but the act of the voter in giving his vote, the House has found more difficulty in determining on the proper exercise of its constitutional power. While the House has always acted on the principle of giving expression to the intent of the voter (I, 575, 639, 641; II, 1090), yet in its later practice it has held that a mandatory state law, even though arbitrary, may cause the rejection of a ballot on which the intent of the voter is plain (II, 1009, 1056, 1077, 1078, 1091).

Where the state courts have upheld a state election law as constitutional the House does not ordinarily question the law (II, 856, 1071). But where there has been no such decision the House, in determining its election cases, passes on the validity of state laws under state constitutions (II, 1011, 1134), and has acted on its decision that they were unconstitutional (II, 1075, 1126).

§ 47. Power of
judging as related
to state laws as
to returns.

§ 48. Power of
judging as related
to state laws as
to acts of the voter.

§ 49. Power of
House as related
to constitutionality
of state laws.

The courts of a State have nothing to do directly with judging the elections, qualifications, and returns of Representatives in Congress (II, 959); but where the highest state court has interpreted the state law the House has concluded that it should generally be governed by this interpretation (II, 645, 731, 1041, 1048). The House is not bound, however, by a decision on an analogous but not the identical question in issue (II, 909); and where the alleged fraud of election judges was in issue, the acquittal of those judges in the courts was held not to be an adjudication binding on the House (II, 1019).

The statutes of the United States provide specific methods for institution of a contest as to the title to a seat in the House (I, 678, 697-706); but the House regards this law as not of absolute binding force, but rather a wholesome rule not to be departed from except for cause (I, 597, 719, 825, 833), and it sometimes by resolution modifies the procedure prescribed by the law (I, 449, 600).

* * * and a Majority of each [House] shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Out of conditions arising between 1861 and 1891 the rule was established that a majority of the Members chosen and living constituted the quorum required by the Constitution (IV, 2885-2888); but later examination has resulted in a decision confirming in the House of Representatives the construction established in the Senate that a quorum consists of a majority of Senators duly chosen and sworn (I, 630; IV, 2891-2894). So the decision of the House now is that after the House is once organized the quorum consists of a majority of those Members chosen, sworn, and living whose membership has not been terminated by resignation or by the action of the House (IV, 2889, 2890). (Speaker Clark, May 9, 1913, Record, p. 1457, 63d Cong., 1st sess.)

§ 50. Effect of interpretation of state election laws by state courts.

§ 51. Laws of Congress not binding on the House in its function of judging its elections.

§ 52. The quorum.

§ 53. Interpretation of the Constitution as to number constituting a quorum.

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For many years the quorum was determined only by noting the numbers of Members voting (IV, 2896, 2897), with the result that Members by refusing to vote could often break a quorum and obstruct the public business (II, 1034; IV, 2895, footnote; V, 5744). But in 1890 Mr. Speaker Reed directed the Clerk to enter on the Journal as part of the record of a yea-and-nay vote names of Members present but not voting, thereby establishing a quorum of record (IV, 2895). This decision, afterwards sustained by the Supreme Court (IV, 2904), established the principle that a quorum present made valid any action by the House, although an actual quorum might not vote (I, 216, footnote; IV, 2932). And thenceforth the point of order as to a quorum was required to be that no quorum was present and not that no quorum had voted (IV, 2917). At the time of the establishment of this principle the Speaker revived the count by the Chair as a method of determining the presence of a quorum at a time when no record vote was ordered (IV, 2909). The Speaker has permitted his count of a quorum to be verified by tellers (IV, 2888), but did not concede it as a right of the House to have tellers under the circumstances (IV, 2916), claiming that the Chair might determine the presence of a quorum in such manner as he should deem accurate and suitable (IV, 2932). The Chair counts all members in sight, whether in the cloak rooms or within the bar (IV, 2970). Later, as the complement to the new view of the quorum, the early theory that the presence of a quorum is as necessary during debate or other business as on a vote was revived (IV, 2935-2949); also, a line of rulings made under the old theory were overruled, and it was established that the point of no quorum might be made after the House had declined to verify a division by tellers or the yeas and nays (IV, 2918-2926).

The absence of a quorum having been disclosed, there must be a quorum of record before the House may proceed to business (IV, 2952, 2953), and the point of no quorum may not be withdrawn after the absence of a quorum has been ascertained and announced by the Chair (IV, 2928-2931). But when an action has been completed, it is too late to make the point of order that a quorum was not present when it was done (IV, 2927). But where action requiring a quorum was taken in the ascertained absence of a quorum by ruling of a Speaker pro tempore, the Speaker on the next day ruled that the action was null and void (IV, 2964). But such absence of a quorum should appear from the Journal if a legislative act is to be vacated for such reason (IV, 2962), and where the assumption that a quorum was present when the House acted was uncontradicted by the Journal, it

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was held that this assumption might not be overthrown by expressions of opinion by Members individually (IV, 2961). A point of no quorum may prevent the report of the Chairman of a Committee of the Whole. (Speaker Gillett, Dec. 13, 1924, p. 624, 68th Cong., 2d sess.) If a question as to a quorum is raised before the reading of the Journal, a quorum must be ascertained before the reading may begin (IV, 2732, 2733). While messages are received in the absence of a quorum they are not read (IV, 3522; V, 6600, 6650). No motion is in order on the failure of a quorum but the motions to adjourn and for a call of the House (IV, 2950). A call of the House is in order under the Constitution in the absence of other rule (IV, 2981). Those present on a call of the House may prescribe a fine as a condition on which an arrested Member may be discharged (IV, 3013, 3014), but this is rarely done.

At the time of organization the two Houses inform one another of the appearance of the quorum in each, and the two Houses jointly inform the President (I, 198-203). A message from one House that its quorum has appeared is not delivered in the other until a quorum has appeared there also (I, 126). But at the beginning of a second session of a Congress the House proceeded to business, although a quorum had not appeared in the Senate (I, 126). At the beginning of a second session of a Congress unsworn Members-elect were taken into account in ascertaining the presence of a quorum (I, 175). In both Houses the oath has been administered to Members-elect in the absence of a quorum (I, 174, 181, 182), although in one case the Speaker objected to such proceedings (II, 875).

§ 56. Relations of the quorum to organization of the House. § 57. Decisions of the court. Decisions of the Supreme Court of the United States: *United States v. Ballin*, 144 U.S., 1; *In re Loney*, 134 U.S., 317; *Kilbourn v. Thompson*, 103 U.S., 190; *Burton v. U.S.*, 202 U.S., 344.

§ 58. The House determines its rules. ²Each House may determine the Rules of its Proceedings, * * *.

The power of each House of Representatives to make its own rules may not be impaired or controlled by the rules of a preceding House (I, 187, 210; V, 6002, 6743-6747), or by a law passed by a prior Congress (I, 82, 245; IV, 3298, 3579; V, 6765, 6766). The ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules (III, 2567), and under later decisions questions of so-called constitutional privilege should also be considered in accordance with the rules (Mar. 16, 1910, p. 3251; May 3, 1921, p. 1129; Apr. 8, 1926, p. 7147). But a law passed by an existing Congress with the concurrence of the House has been recognized by that House as of binding force in matters of procedure (V, 6767, 6768). In exercising its constitutional power to change its rules the House may confine itself within certain limitations (V, 6756); but the attempt of the House to deprive the Speaker of his vote as a Member by a rule was successfully resisted (V, 5966, 5967). While a law of 1789 requires the election of a Clerk before the House proceeds to business yet the House has held that

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it may adopt rules before electing a Clerk (I, 245). It has adopted a rule before election of a Speaker (I, 94, 95); but in 1839 was deterred by the law of 1789 and the Constitution from adopting rules before the administration of the oath to Members-elect (I, 140). The earlier theory that an officer might be empowered to administer oaths by a rule of either House has been abandoned in later practice and the authority has been conferred by law (III, 1823, 1824, 2079, 2303, 2479).

Before the adoption of rules the House is governed by general parliamentary law, but the Speakers have been inclined to give weight to the precedents of the House in modifying the usual constructions of that law (V, 6758-6760). (Speaker Clark, Apr. 7, 1913, p. 77, 63d Cong., 1st sess.)

§ 60. Procedure in the House before the adoption of rules.

The general parliamentary law as understood in the House is founded on Jefferson's Manual and modified by the practice of American legislative assemblies, especially of the House of Representatives (V, 6761-6763), but the provisions of the House's accustomed rules are not necessarily followed (V, 5509, 5604).

The two Houses of Congress adopted in the early years of the Government joint rules to govern their procedure in matters requiring concurrent action; but in 1876 these joint rules were abrogated (IV, 3430; V, 6782-6787). The most useful of their provisions continue to be observed in practice, however (IV, 3430; V, 6592).

§ 61. Joint rules.

* * *

§ 62. Punishment and expulsion of Members.

[Each House may] punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

§ 63. Punishment by censure.

The two methods of punishment are censure and expulsion. In action for censure the House has discussed as to whether or not the principles of the procedure of the courts should be followed (II, 1255). In one instance, pending consideration of a resolution to censure a Member, the Speaker informed him that he should retire (II, 1366), but this is not usual, and Members against whom resolutions have been pending have participated in debate, either by consent (II, 1656) or without question as to consent (II, 1246, 1253). But after the House had voted censure and the Member has been brought to the bar by the Sergeant-at-Arms to be censured, it was held that he might not then be heard (II, 1259). A resolution of censure should not apply to more than one Member (II, 1240, 1621). Censure is inflicted by the Speaker (II, 1259) and the words are entered in the Journal (II, 1251,

1656). When Members have resigned pending proceedings for censure, the House has nevertheless adopted the resolutions of censure (II, 1239, 1273, 1275, 1656). Members have been censured for personalities and other disorder in debate (II, 1251, 1253, 1254, 1259), assaults on the floor (II, 1665), for presenting a resolution alleged to be insulting to the House (II, 1246), and for corrupt acts (II, 1274, 1286). In one instance Members were censured for acts before the election of the then existing House (II, 1286).

The power of expulsion has been the subject of much discussion (I, 469, 476, 481; II, 1264, 1265, 1269). In one case a Member-elect who had not taken the oath was expelled (II, 1262), and in another case the power to do this was discussed (I, 476). In one instance the Senate assumed to annul its action of expulsion (II, 1243). The Supreme Court has decided that a judgment of conviction under a disqualifying statute does not compel the Senate to expel (II, 1282). The power of expulsion in its relation to offenses committed before the Members' election has been discussed (II, 1286), and in one case the Judiciary Committee of the House concluded that a Member might not be punished for an offense alleged to have been committed against a preceding Congress (II, 1283); but the House itself declined to express doubt as to its power to expel and proceeded to inflict censure (II, 1286). But this case is exceptional, and in general both Houses have distrusted their power to punish in such cases (II, 1264, 1284, 1285, 1288, 1289). The resignation of the accused Member has always caused a suspension of proceedings for expulsion (II, 1275, 1276, 1279).

The House, in a proceeding for expulsion, declined to give the Member a trial at the bar (II, 1275); but the Senate has permitted counsel to appear at its bar (II, 1263), although it declined to grant a request for a specific statement of charges or compulsory process for witnesses (II, 1264). Members threatened with expulsion have been heard on their own behalf by consent (II, 1273, 1275), or as a matter of right (II, 1269, 1286). In general, there has been discussion as to whether or not the principles of the procedure of the courts should be followed (II, 1264). The Senate once expelled several Senators by a single resolution (II, 1266). Members and Senators have been expelled for treason (II, 1261), for high misdemeanor inconsistent with public duty (II, 1263), for friendship or association with enemies of the Government and absence from their seats (II, 1269, 1270), and for bearing arms against the Government (II, 1267).

§ 65. Procedure for
expulsion.

A proposition to censure or expel a Member presents a question of privilege (II, 1254, 2648-2651).

§ 66. Propositions
for punishment
entertained as of
privilege.

A resolution providing that the House immediately proceed to consider whether a Member should be expelled presents a question of privilege. (Speaker Clark, Dec. 9, 1913, pp. 584-586, Record, 63d Cong., 2d sess.)

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Decisions of the Supreme Court of the United States:

§ 67. Decisions of the court. *Anderson v. Dunn*, 6 Wh., 204; *Kilbourn v. Thompson*, 103 U. S., 168; *United States v. Ballin*, 144 U. S., 1; *In re Chapman*, 166 U. S., 661; *Burton v. U. S.*, 202 U. S., 344.

§ 68. Each House to keep a journal. ³ Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; * * *

§ 69. The journal the official record. The Journal and not the Congressional Record is the official record of the proceedings of the House (IV, 2727). Its nature and functions have been the subject of extended discussions (IV, 2730, footnote). The House has fixed its title (IV, 2728). While it ought to be a correct transcript of the proceedings of the House, the House has not insisted on a strict chronological order of entries (IV, 2815). The Journal is dated as of the legislative and not the calendar day (IV, 2746).

§ 70. Journal a record of proceedings and not of reasons. The Journal records proceedings but not the reasons therefor (IV, 2811) or the circumstances attending (IV, 2812), or the statements or opinions of Members (IV, 2817-2820). Exceptions to this rule are rare (IV, 2808, 2825). Protests have on rare occasions been admitted by the action of the House (IV, 2806, 2807), but the entry of a protest on the Journal may not be demanded by a Member as a matter of right (IV, 2798) and such demand does not present a question of privilege.

§ 71. House's absolute control of entries in the journal. The House controls its Journal and may decide what are proceedings, even to the extent of omitting things actually done or recording things not done (IV, 2784); and the Speaker entertained a motion to amend it so as to cause it to state what was not the fact, leaving it for the House to decide on the propriety of the act (IV, 2785), holding that he could not prevent a majority of the House from so amending the Journal as to undo an actual transaction (IV, 3091-3093). And only in rare instances the House has nullified proceedings by rescinding the records of them in the Journal (IV, 2787), the House and Senate usually insisting on the accuracy of its Journal (IV, 2783, 2786). In rare instances the House and Senate have rescinded or expunged entries in Journals of preceding Congresses (IV, 2730, footnote, 2790-2793).

The Journal should record the result of every vote and state in general terms the subject of it (IV, 2804); but the result of a vote is recorded in figures only when the yeas and nays are taken (IV, 2827), or when a vote is taken by ballot, it having been determined in latest practice that the Journal should show not only the result but the state of the ballot or ballots (IV, 2832).

It is the uniform practice of the House to approve its Journal for each legislative day (IV, 2731). Where Journals of more than one session remain unapproved, they are taken up for approval in chronological order (IV, 2771-2773).

§ 73. Approval of the journal.

In ordinary practice the Journal is approved by the House without the formal putting of the motion to vote (IV, 2774).

The motion to amend the Journal takes precedence of the motion to approve it (IV, 2760); but the motion to amend may not be admitted after the previous question is demanded on a motion to approve (IV, 2770). An expression of opinion as to a decision of the Chair was held not in order as an amendment to the Journal (IV, 2848). While a proposed correction of the Journal may be recorded in the Journal, yet it is not in order to insert in full in this indirect way what has been denied insertion in the first instance (IV, 2782, 2804, 2805). The earlier practice was otherwise, however (IV, 2801-2803). The Journal of the last day of a session is not approved on the assembling of the next session, and is not ordinarily amended (IV, 2743, 2744).

§ 74. Motions to amend the Journal.

* * * and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

§ 75. Yeas and nays entered on the Journal.

The yeas and nays may be ordered before the organization of the House (I, 91), but are not taken in Committee of the Whole (IV, 4722, 4723). They are not necessarily taken on the passage of a resolution proposing an amendment to the Constitution (V, 7038, 7039). In the earlier practice

§ 76. Conditions of ordering yeas and nays.

of the House it was held that less than a quorum might not order the yeas and nays, but for many years the decisions have been uniformly the other way (V, 6016-6028). Neither is a quorum necessary on a motion to reconsider the vote whereby the yeas and nays are ordered (V, 5693). When a quorum fails on a yeas and nays vote it is the duty of the Speaker and the

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House to take notice of that fact (IV, 2953, 2963, 2988). In this case the order for the yeas and nays remains effective whenever the bill again comes before the House (V, 6014, 6015), and it has been held that the question of consideration might not intervene on a succeeding day before the second calling of the yeas and nays (V, 4949).

The yeas and nays may be demanded while the Speaker is announcing the result of a division (V, 6039), while a vote by tellers is being taken (V, 6038), and even after the announcement of the vote if the House has not passed to other business (V, 6040, 6041). But after the Speaker has announced the result of a division on a motion and is in the act of putting the question on another motion it is too late to demand the yeas and nays on the first motion (V, 6042). And it is not in order during the various processes of a division to repeat a demand for the yeas and nays which has once been refused by the House (V, 6029, 6030, 6031). The constitutional right of a Member to demand the yeas and nays may not be overruled as dilatory (V, 5737); but this constitutional right does not exist as to a vote to second a motion when such second is required by the rules (V, 6032-6036). The right to demand the yeas and nays is not waived by the fact that the Member demanding them has just made the point of no quorum and caused the Chair to count the House (V, 6044).

In passing on a demand for the yeas and nays the Speaker need determine only whether one-fifth of those present sustain the demand (V, 6043). After the House, on a vote by tellers, has refused to order the yeas and nays it is too late to demand the count of the negative on an original rising vote (V, 6045).

A motion to reconsider the vote ordering the yeas and nays is in order (V, 6029), and the vote may be reconsidered by a majority. If the House votes to reconsider the yeas and nays may again be ordered by one-fifth (V, 5689-5691). But when the House, having reconsidered, again orders the yeas and nays, a second motion to reconsider may not be made (V, 6037). In one instance it was held that the yeas and nays might be demanded on a motion to reconsider the vote whereby the yeas and nays were ordered (V, 5689), but evidently there must be a limit to this process. The vote whereby the yeas and nays are refused may be reconsidered (V, 5692).

In the general but not the universal practice debate has not been closed by the ordering of the yeas and nays until one Member has responded to the call (V, 6101-6105, 6160, 6161). A motion to adjourn (V, 5366) may be admitted after the yeas and nays are ordered and before the roll call has begun (V, 5366); and a motion to suspend the rules has been entertained

§ 77. Demanding the yeas and nays.

§ 78. Yeas and nays ordered by one-fifth.

§ 79. Reconsideration of the vote ordering the yeas and nays.

§ 80. Effect of an order of the yeas and nays.

after the yeas and nays have been demanded on another matter (V, 6835). A demand for tellers is not precluded or set aside by the fact that the yeas and nays are demanded and refused (V, 5998).

Decisions of the Supreme Court of the United States:

§ 81. Decisions of the court.

Field v. Clark, 143 U. S., 649; United States v. Ballin, 144 U. S., 1; Twin City Bank v. Nebeker, 167 U. S., 196; Wilkes County v. Coler, 180 U. S., 506; Marshall v. Gordon, 243 U. S., 521.

4 Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

§ 82. Adjournment for more than three days.

The House of Representatives in adjourning for not "more than three days" must take into the count either the day of adjourning or the day of meeting (V, 6673, 6674), and Sunday is not taken into account in making this computation (V, 6673, 6674). The House has by standing order provided that it should meet on two days only of each week instead of daily (V, 6675). Before the election of Speaker the House has adjourned for more than one day (I, 89, 221).

Congress is adjourned for more than three days by a concurrent resolution (IV, 4031, footnote). When it adjourns in this way, but not to or beyond the day fixed by Constitution or law for the next regular session to begin, the session is not thereby necessarily terminated (V, 6676, 6677).

§ 84. Resolutions for adjournment of the two Houses.

Until the Sixty-seventh Congress neither House had ever adjourned for more than three days by itself with the consent of the other, but resolutions had been offered for the accomplishment of that end (V, 6702, 6703.) On June 30, 1922 (67th Cong., 2d sess.), the House adjourned until August 15, 1922, with the consent of the Senate. On one occasion the two Houses provided for an adjournment to a certain day, with a provision that if there should be no quorum present on that day the session should terminate (V, 6686). A concurrent resolution to provide for adjournment for more than three days is offered in the House as a matter of privilege (V, 6701-6706).

A resolution providing for an adjournment sine die is not debatable. (Speaker Longworth, June 21, 1926, 69th Cong., 1st. sess., p. 11698.)

SECTION 6. 1 The Senators and Representatives

§ 85. Compensation of Members.

shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.

* * *

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§§ 86-90.

This compensation has been ascertained by law at various times, the present rate being fixed at \$10,000 a year for Members, § 86. Salary, mileage, Delegates, and Resident Commissioners, and \$15,000 a and deductions. year for the Speaker, with mileage at the rate of 20 cents per mile estimated by the nearest route usually traveled in going to and returning from each regular session (II, 1159, 1160). The statutes also provide for deductions from the pay of Members and Delegates who are absent from the sessions of the House for reasons other than illness of themselves and families, or who retire before the end of the Congress (IV, 3011, footnote). The law as to deductions has been held to apply only to Members who have taken the oath (II, 1154). Members and Delegates are paid monthly on certificate of the Speaker during sessions and of the Clerk during recesses. The Sergeant-at-Arms, or in case of his disability the Treasurer of the United States, disburses the pay of Members (II, 1148).

Questions have arisen frequently as to compensation of Members, especially in cases of Members elected to fill vacancies § 87. Questions as to compensation. (I, 500; II, 1155) and where there have been questions as to incompatible offices (I, 500) or titles to seats (II, 1206).

Each Member and Delegate receives \$125 annually for stationery and the Clerk maintains a stationery room for supplying § 88. Stationery allowance and clerk hire. articles (II, 1161, 1162). Clerk hire is provided for each Member, Delegate, and Resident Commissioner at the rate of \$4,000 per annum, no person receiving a salary in excess of \$3,300 per annum (43 Stat., p. 152).

Decisions of the courts:

Page *v.* U. S., 127 U. S., 67; Shelley *v.* U. S., 19 Ct. Cl., 653; Wilson *v.* U. S., 44 Ct. Cl., 428.

* * * They [the Senators and Representatives] shall in all Cases, except Treason, Felony, § 89. Privilege of Members from arrest. and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; * * *

The word "felony" in this provision has been interpreted not to refer to a delinquency in a matter of debt (II, 2676), and § 90. Assertions of privilege of Members by the House. "treason, felony, and breach of the peace" have been construed to mean all indictable crimes (III, 2673). The courts have discussed and sustained the privilege of the Member in going to and returning from the session (III, 2674); and

where a person assaulted a Member on his way to the House, although at a place distant therefrom, the House arrested him on warrant of the Speaker, arraigned him at the bar and committed him (II, 1626, 1628). Other assaults under these circumstances have been treated as breaches of privilege (II, 1645). Where a Member had been arrested and detained under mesne process in a civil suit during a recess of Congress, the House decided that he was entitled to discharge on the assembling of Congress, and liberated him and restored him to his seat by the hands of its own officer (III, 2676).

§ 91. Members privileged from being questioned for speech or debate.

* * * and for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other place.

This privilege as to "any speech or debate" applies generally to "things done in a session of the House by one of its Members in relation to the business before it" (II, 1655; III, 2675). For assaulting a Member for words spoken in debate, Samuel Houston, not a Member, was arrested, tried, and censured by the House (II, 1616-1619). Where Members have assaulted other Members for words spoken in debate (II, 1656) or proceeded by duel (II, 1644), or demanded explanation in a hostile manner (II, 1644) the House has considered the cases as of privilege. A communication addressed to the House by an official in an Executive Department calling in question words uttered by a Member in debate was criticised as a breach of privilege and withdrawn (III, 2684). An explanation having been demanded of a Member by a person not a Member for a question asked of the latter when a witness before the House, the matter was considered but not pressed as a breach of privilege (III, 2681). A letter from a person supposed to have been assailed by a Member in debate, asking properly and without menace if the speech was correctly reported, was held to involve no question of privilege (III, 2682). Unless it be clear that a Member has been questioned for words spoken in debate, the House declines to act (II, 1620; III, 2680).

For assaulting a Member, Charles C. Glover was arrested, arraigned at the bar of the House, and censured by the Speaker by direction of the House, although the provocation of the assault was words spoken in debate in the previous Congress. (Record, May 9, 1913, p. 1452, 63d Cong., 1st sess.)

Decisions of the Supreme Court of the United States:

§ 92. Decisions of the court.

Cox v. M'Clenachan, 3 Dall., 478; U. S. v. Cooper, 4 Dall., 341; Kilbourn v. Thompson, 103 U. S., 168; Williamson v. U. S., 207 U. S., 425; Prigg v. Penn-

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sylvania, 16 Pet., 619; *Burton v. U. S.*, 196 U. S., 295; *Bolton v. Martin*, 1 Dall., 296; *U. S. v. Kirby*, 7 Wall., 486; *Anderson v. Dunn*, 6 Wheat., 215; *Marshall v. Gordon*, 243 U. S., 251.

² No Senator or Representative shall, during the Time for which he was elected, be appointed to any Civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; * * *.

In a few cases questions have arisen under this paragraph (I, 506, footnote).

§ 94. Members not to hold office under the United States.

* * * and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

The meaning of the word "office" as used in this paragraph has been discussed (I, 185, 417, 478, 493; II, 993), as has also the general subject of incompatible offices (I, 563).

The Judiciary Committee has concluded that members of commissions created by law to investigate and report, but having no legislative, executive, or judicial powers, and visitors to academies, regents, directors, and trustees of public institutions, appointed under the law by the Speaker, are not officers within the meaning of the Constitution (I, 493). The House has also distinguished between the performance of paid services for the Executive (I, 495), like temporary service as assistant United States attorney (II, 993), and the acceptance of an incompatible office. The House has declined to hold that a contractor under the Government is constitutionally disqualified to serve as a Member (I, 496). But the House, or its committees, have found disqualified a Member who was appointed a militia officer in the District of Columbia (I, 486) and Members who have accepted commissions in the Army (I, 491, 492, 494). But the Judiciary Committee has expressed the opinion that persons on the retired list of the Army do not hold office under the United States in the constitutional sense (I, 494). A Member-elect has continued to act as governor of a State after the assembling of the Congress to which he was elected (I, 503).

§ 95. As to what are incompatible offices.

After a careful consideration of the status of a Member-elect, the House decided that such an one was not affected by the constitutional requirement (I, 499), the theory being advanced that the status of the Member-elect is distinguished from the status of the Member who has qualified (I, 184). And a Member-elect who continued in an office after his election but resigned before taking his seat, was held entitled to the seat (I, 497, 498). But when a Member-elect held an incompatible office after the meeting of Congress he was held to have disqualified himself (I, 492). In other words, the Member-elect may defer until the meeting of Congress his choice between the seat and an incompatible office (I, 492).

The House has manifestly leaned to the idea that a contestant holding an incompatible office need not make his election until the House has declared him entitled to the seat (I, 505). Although a contestant had accepted and held a State office in violation of the state constitution, if he were really elected a Congressman, the House did not treat his contest as abated (II, 1003). Where a Member had been appointed to an incompatible office a contestant not found to be elected was not admitted to fill the vacancy (I, 807).

Where a Member has accepted an incompatible office, the House has assumed or declared the seat vacant (I, 501, 502). In the cases of Baker and Yell, the Elections Committee concluded that the acceptance of a commission as an officer of volunteers in the national army vacated the seat of a Member (I, 488), and in another similar case the Member was held to have forfeited his right to a seat (I, 490). The House has seated a person bearing regular credentials on ascertaining that his predecessor in the same Congress had accepted a military office (I, 572). But usually the House by resolution formally declares the seat vacant (I, 488, 492). A Member-elect may defer until the meeting of Congress his choice between the seat and an incompatible office (I, 492). But when he retains the incompatible office and does not qualify, a vacancy has been held to exist (I, 500). A resolution excluding a Member who has accepted an incompatible office may be agreed to by a majority vote (I, 490). A Member charged with acceptance of an incompatible office was heard in his own behalf during the debate (I, 486).

§§ 99-101.

SECTION 7. ¹ All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

§ 99. Bills raising revenue to originate in the House.

This provision has been the subject of much discussion (II, 1488, 1494). In the earlier days the practice was not always correct (II, 1484); but in later years the House has insisted on its prerogative and the Senate has often shown reluctance to infringe thereon (II, 1482, 1483, 1493). In several instances, however, the subject has been matter of contention, conference (II, 1487, 1488), and final disagreement (II, 1485, 1487, 1488). Sometimes, however, when the House has questioned an invasion of prerogative, the Senate has receded (II, 1486, 1493). The disagreements have been especially vigorous over the right of the Senate to concur with amendments (II, 1489), and while the Senate has acquiesced in the sole right of the House to originate revenue bills, it has at the same time held to a broad power of amendment (II, 1497-1499). The House has frequently challenged the Senate on this point (II, 1481, 1491, 1496) (Feb. 1, 1909, 60th Cong., 2d sess.). When the House has conceived that its prerogative has been invaded, it has ordered the bill to be returned to the Senate (II, 1493-1495) (Feb. 3, 1925, 68th Cong., 2d sess.) or declined to proceed further with it (II, 1485). In one instance a revenue question was not objected to until the stage of conference (II, 1492). On January 16, 1924, the Senate decided that a bill proposing a gasoline tax in the District of Columbia should not originate in the Senate.

Decisions of the Supreme Court of the United States:

U. S. v. Norton, 91 U. S., 569; *Field v. Clark*, 143 U. S., 649; *Twin City Bank v. Nebeker*, 167 U. S., 196; *Millard v. Roberts*, 202 U. S., 429; *Rainey v. U. S.*, 232 U. S., 310; *Flint v. Stone Tracy Co.*, 220 U. S., 107; *Hubbard v. Lowe*, 226 Fed., 135; *U. S. v. Hill*, 123 U. S., 681.

² Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to recon-

§ 101. Approval and disapproval of bills by the President.

sider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. * * *.

The approval of a bill by the President of the United States is valid only with his signature (IV, 3490). At the close of a Congress, when the two Houses prolong their sessions into the forenoon of March 4, the approvals have been dated on the prior legislative day, as the legislative portion of March 4 belongs to the term of the new Congress. In one instance, however, bills signed on the forenoon of March 4 were dated as of that day with the hour and minute of approval given with the date (IV, 3489). The act of President Tyler in filing with a bill an exposition of his reasons for signing it was examined and severely criticised by a committee of the House (IV, 3492); and in 1842 a committee of the House discussed the act of President Jackson in writing above his signature of approval a memorandum of his construction of the bill (IV, 3492). But where the President has accompanied his message announcing the approval with a statement of his reasons there has been no question in the House (IV, 3491). The statutes require that bills signed by the President shall be received by the Secretary of State (IV, 3485) and deposited in his office (IV, 3429).

Notice of the signature of a bill by the President is sent by message to the House in which it originated and that House informs the other (IV, 3429). But this notice is not necessary to the validity of the act (IV, 3495). Sometimes, at the close of a Congress the President informs the House of such bills as he has approved and of such as he has allowed to fail (IV, 3499-3502). In one instance he communicated his omission to sign a bill through the committee appointed to notify him that Congress was about to adjourn (IV, 3504). A bill that had not actually passed having been signed by the President, he disregarded it and a new bill was passed (IV, 3498).

§ 102. The act of approval.

§ 103. Notice of approval sent by message.

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Messages of the President giving notice of bills approved are entered in the Journal and published in the Congressional Record (V, 6593).

A message withholding approval of a bill, called a veto message, is sent to the House in which the bill originated; but it has been held that such a message may not be returned to the President on his request (IV, 3521). A vetoed bill received in the House by way of the Senate is considered as if received directly from the President and supersedes the regular order of business (IV, 3537). A veto message may not be read in the absence of a quorum, even though the House be about to adjourn sine die (IV, 3522); but the message may be read and acted on at the next session of the same Congress (IV, 3522). When the President has been prevented by adjournment from returning a bill with his objections he has sometimes at the next session communicated his reasons for not approving (V, 6618-6620).

It is the usual but not invariable rule that a bill returned with the objections of the President shall be voted on at once (IV, 3534-3536), but it has been held that the constitutional mandate that "the House shall proceed to consider" means that the House shall immediately proceed to consider it under the rules of the House, and that the ordinary motions under the rules of the House—to refer, to commit, or to postpone to a day certain—are in order. (Speaker Gillett, May 15, 1924, 68th Cong., 1st sess., p. 8663; IV, 3542-3550.) A motion to refer a vetoed bill, either with or without the message, has been held allowable within the constitutional mandate that the House "shall proceed to reconsider" (IV, 3550). But while the ordinary motion to refer may be applied to a vetoed bill, it is not in order to move to recommit it pending the demand for the previous question or after it is ordered (IV, 3551). (Speaker Gillett, Aug. 19, 1919, p. 3983.) A vetoed bill having been rejected by the House, the message was referred (IV, 3552). Committees to which vetoed bills have been referred have sometimes neglected to report (IV, 3523, 3550, footnotes). A vetoed bill may be laid on the table (IV, 3549), but it is still highly privileged and a motion to take it from the table is in order at any time (IV, 3549). Also a motion to discharge a committee from the consideration of such a bill is privileged (IV, 3532). While a vetoed bill is always privileged, the same is not true of a bill reported in lieu of it (IV, 3531).

If two-thirds of the House to which a bill is returned with the President's objections agree to pass it, and then two-thirds of the other House also agree, it becomes a law (IV, 3520). The two-thirds vote required to pass the bill is two-thirds of the Members present and not two-thirds of the total membership of the House (IV, 3537, 3538, *Missouri Pac. Ry. Co. v. Kansas*, 248 U. S., 276). Only Members voting should be considered in determining whether two-thirds voted in the affirmative. (Speaker Clark, Aug. 13, 1912, 62d Cong., 2d sess., p. 10847.) Motion to reconsider may not be applied to the vote on reconsideration of a bill returned with the objections of the President (V, 5644). (Speaker Clark, Feb. 19, 1913, 62d Cong., 3d sess., p. 3430.)

§ 106. Action on a vetoed bill.

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§§ 107-109.

It is the practice for one House to inform the other by message of its decision that a bill returned with the objections of the President shall not pass (IV, 3539-3541). A bill passed notwithstanding the objections of the President is sent by the presiding officer of the House which last acts on it to the Secretary of State for preservation (IV, 3524), and the Secretary of State receives it and deposits it in his office (IV, 3485).

A bill incorrectly enrolled has been recalled from the President, who § 107. Errors in bills sent to the President. erased his signature (IV, 3506). Bills sent to the President but not yet signed by him are sometimes recalled by concurrent resolution of the two Houses (IV, 3507-3509), and amended; but this proceeding is regarded as irregular (IV, 3510-3518). An error in an enrolled bill that has gone to the President may also be corrected by a supplementary joint resolution (IV, 3519).

Decision of the Supreme Court of the United States:

Missouri Pac. Ry. Co. v. Kansas, 248 U. S., 276.

* * *

§ 108. Bills which become laws without the President's approval.

If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

The ayes and nays are required to pass a bill over the President's veto (IV, 2726, 3520).

The President may sign a bill within ten days, even though the House may in the meantime have adjourned for a recess (IV, 3493, 3494, 3496), and a bill so signed during a recess (as distinguished from sine die adjournment) has been held to be valid by the Supreme Court (IV, 3495). There is much doubt, however, as to whether a bill which remains with the President ten days without his signature, Congress having in the meanwhile adjourned for a recess, becomes a law (IV, 3493). (See also Report No. 2054, 69th Cong., 2d sess.) There is also a question as to the return of a vetoed bill, Congress being in recess beyond the limit of ten days (IV, 3496). In one instance the President signed a bill after a final adjournment of Congress but within ten days. This, however, gave rise to grave doubts and resulted in an adverse report by a House committee (IV, 3497). The second session of the Sixty-sixth Congress adjourned sine die on June 5, 1920. President Wilson signed several bills subsequent to this adjournment, on June 10 and June 14, 1920 (41 U. S. Stat., p. 1077).

Decisions of the Supreme Court of the United States:

§ 109. Decisions of the court.

Field v. Clark, 143 U. S., 649; *United States v. Ballin*, 144 U. S., 1; *Twin City Bank v. Nebeker*, 167 U. S., 196; *La Abra Silver Mining Co. v. United States*, 175 U. S., 423; *Wilkes County v. Coler*, 180 U. S., 506.

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§§ 110-113.

³ Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

§ 110. As to presentation of orders and resolutions for approval.

It has been settled conclusively that a joint resolution proposing an amendment to the Constitution should not be presented to the President for his approval (V, 7040). Although the requirement of the Constitution seems specific, the practice of Congress has been to present to the President for approval only such concurrent resolutions as are legislative in effect (IV, 3483, 3484).

Decisions of the Supreme Court of the United States:

§ 111. Decisions of the court.

Field v. Clark, 143 U. S., 649; *United States v. Ballin*, 144 U. S., 1; *Fourteen Diamond Rings v. United States*, 183 U. S., 176.

SECTION 8. The Congress shall have Power ¹ To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts, and Excises shall be uniform throughout the United States;

§ 112. The revenue power.

Decisions of the Supreme Court of the United States:

§ 113. Decisions of the court.

Hylton v. United States, 3 Dall., 171; *McCulloch v. State of Maryland*, 4 Wh., 316; *Loughborough v. Blake*, 5 Wh., 317; *Osborn v. Bank of the United States*, 9 Wh., 738; *Weston et al. v. City Council of Charleston*, 2 Pet., 449; *Dob-*

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bins v. The Commissioners of Erie County, 16 Pet., 435; *License Cases*, 5 How., 504; *Cooley v. Board of Wardens of Port of Philadelphia et al.*, 12 How., 299; *McGuire v. The Commonwealth*, 3 Wall., 387; *Van Allen v. The Assessors*, 3 Wall., 573; *Bradley v. The People*, 4 Wall., 459; *License Tax Cases*, 5 Wall., 462; *Pervear v. The Commonwealth*, 5 Wall., 475; *Woodruff v. Parham*, 8 Wall., 123; *Hinson v. Lott*, 8 Wall., 148; *Veazie Bank v. Fenno*, 8 Wall., 533; *The Collector v. Day*, 11 Wall., 113; *United States v. Singer*, 15 Wall., 111; *State tax on foreign-held bonds*, 15 Wall., 300; *United States v. Railroad Company*, 17 Wall., 322; *Railroad Company v. Peniston*, 18 Wall., 5; *Scholey v. Rew*, 23 Wall., 331; *National Bank v. United States*, 101 U. S., 1; *Springer v. United States*, 102 U. S., 586; *Legal Tender Case*, 110 U. S., 421; *Head Money Cases*, 112 U. S., 580; *Van Brocklin v. State of Tennessee*, 117 U. S., 151; *Field v. Clark*, 143 U. S., 649; *New York, Lake Erie and Western R. R. v. Pennsylvania*, 153 U. S., 628; *Pollock v. Farmers' Loan and Trust Co. (Income Tax Case)*, 157 U. S., 429; *United States v. Realty Company*, 163 U. S., 427; *In re Kollock*, 165 U. S., 526; *Nichols v. Ames*, 173 U. S., 509; *Knowlton v. Moore*, 178 U. S., 41; *De Lima v. Bidwell*, 182 U. S., 1; *Dooley v. United States*, 182 U. S., 222; *Fourteen Diamond Rings v. United States*, 183 U. S., 176; *Felsenheld v. United States*, 186 U. S., 126; *Thomas v. United States*, 192 U. S., 363; *Binns v. United States*, 194 U. S., 486; *South Carolina v. United States*, 199 U. S., 437; *Flaherty v. Hanson*, 215 U. S., 515; *Flint v. Stone Tracy Co.*, 220 U. S., 107; *Billings v. U. S.*, 232 U. S., 261; *Rainey v. U. S.*, 232 U. S., 310; *Bailey v. Drexel Furn. Co. (child labor)*, 259 U. S., 20; *Hill v. Wallace*, 259 U. S., 44; *Browne v. Thorne*, 260 U. S., 137.

§ 114. The borrowing power.

² To borrow Money on the credit of the United States;

Decisions of the Supreme Court of the United States:

§ 115. Decisions of the court.

McCulloch v. The State of Maryland, 4 Wh., 316; *Weston et al. v. The City Council of Charleston*, 2 Pet., 449; *Bank of Commerce v. New York City*, 2 Black, 620; *Bank Tax Cases*, 2 Wall., 200; *The Bank v. The Mayor*, 7 Wall., 16; *Bank v. Supervisors*, 7 Wall., 26; *Hepburn v. Griswold*, 8 Wall., 603; *National Bank v. Commonwealth*, 9 Wall., 353; *Parker v. Davis*, 12 Wall., 457; *Legal Tender Case*, 110 U. S., 421; *Home Insurance Company v. New York*, 134 U. S., 594; *Home Savings Bank v. Des Moines*, 205 U. S., 503; *U. S. v. Sacks*, 257 U. S., 37.

§ 116. Power over commerce.

³ To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

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Decisions of the Supreme Court of the United States:

Gibbons *v.* Ogden, 9 Wheat., 1; Brown *v.* Maryland, 12 Wheat., 419; Trade-mark Cases, 100 U. S., 96; Paul *v.* Virginia, 8 Wall., 168; Cooley *v.* Philadelphia, 12 How., 299; Hall *v.* De Cuir, 95 U. S., 487; Pensacola Tel. Co. *v.* Western Union, 96 U. S., 9; U. S. *v.* Knight Co., 156 U. S., 1; The Shreveport Case, 234 U. S., 342; Addyston Pipe & Steel Co. *v.* U. S., 175 U. S., 211; Champion *v.* Ames, 188 U. S., 321; I. C. C. *v.* Delaware, etc., R. Co., 220 U. S., 235.

Recent decisions of the Supreme Court of the United States:

Dahnke-Walker Co. *v.* Bondurant, 257 U. S., 282; U. S. *v.* U. S. Steel Corp., 251 U. S., 417; Duplex Co. *v.* Deering, 254 U. S., 443; Federal Trade Comm. *v.* Beech-Nut Co., 257 U. S., 441; Texas *v.* I. C. C., 258 U. S., 158; Krichman *v.* U. S., 256 U. S., 363; Northern Pac. R. Co. *v.* North Dakota, 250 U. S., 135; Penn. R. Co. *v.* Weber, 257 U. S., 85; Cent. R. Co. *v.* U. S., 257 U. S., 247; Wisconsin *v.* Chicago, etc., R. Co., 257 U. S., 563; United Fuel Gas Co. *v.* Hallanan, 257 U. S., 277; Baltimore, etc., R. Co. *v.* Settle, 260 U. S., 166; South Covington, etc., R. Co. *v.* Ky., 252 U. S., 399; Texas *v.* Eastern Texas R. Co., 258 U. S., 204; Michigan Cent. R. Co. *v.* Owen & Co., 256 U. S., 427; Williams *v.* U. S., 255 U. S., 336; American Column Co. *v.* U. S., 257 U. S., 377; Crescent Oil Co. *v.* Miss., 257 U. S., 129; Weeds *v.* U. S., 255 U. S., 109; Lemke *v.* Farmers Grain Co., 258 U. S., 50; Mo. Pac. R. Co. *v.* McGrew Coal Co., 256 U. S., 134; St. Louis, etc., R. Co. *v.* Mo., 254 U. S., 535; Erie R. Co. *v.* New Jersey, 254 U. S., 394; Denver R. Co. *v.* Denver, 250 U. S., 241; Penn. Gas Co. *v.* Public Service Comm., 252 U. S., 23; Mackay Tel., etc., Co. *v.* Little Rock, 250 U. S., 94; Economy Light Co. *v.* U. S., 256 U. S., 113; Shively *v.* Bowlby, 152 U. S., 1; International Bridge Co. *v.* New York, 254 U. S., 126; Wallace *v.* Hines, 253 U. S., 66; Davis *v.* Wallace, 257 U. S., 478; Postal Tel. Cable Co. *v.* Fremont, 255 U. S., 124; St. Louis, etc., R. Co. *v.* Hagerman, 256 U. S., 314; Underwood Type-writer Co. *v.* Chamberlain, 254 U. S., 113; Wagner *v.* Covington, 251 U. S., 95; Askren *v.* Continental Oil Co., 252 U. S., 444; Heisler *v.* Thomas Colliery Co., 260 U. S., 245; American Mfg. Co. *v.* St. Louis, 250 U. S., 459; National Union *v.* Wanberg, 260 U. S., 71.

⁴To establish a uniform Rule of Naturalization,¹
and uniform Laws on the subject of
§ 118. Naturaliza- Bankruptcies throughout the United
tion and States;²
bankruptcy.

Decisions of the Supreme Court of the United States:

§ 119. Decisions of the court. ¹Chirac *v.* Chirac, 2 Wheat., 269; ¹Osborn *v.* U. S. Bank, 9 Wheat., 827; ¹Ogden *v.* Saunders, 12 Wheat., 276; ¹Shanks *v.* Dupont, 2 Pet., 242; ¹Gassies *v.* Ballon, 6 Pet., 761; ¹Dred Scott *v.* Sanford, 19 How., 393; ¹Hauenstein *v.* Lynham,

100 U. S., 484; ¹ *Elk v. Wilkins*, 112 U. S., 101; ¹ *Nishimura Ekiu v. U. S.*, 142 U. S., 651; ¹ *Boyd v. Nebraska*, 143 U. S., 162; ¹ *U. S. v. Wong Kim Ark*, 169 U. S., 703; ¹ *Holmgren v. U. S.*, 217 U. S., 509; ¹ *Luria v. U. S.*, 231 U. S., 9; ² *Sturges v. Crowninshield*, 4 Wh., 122; ² *McMillan v. McNeil*, 4 Wh., 209; ² *Farmers and Mech. Bank v. Smith*, 6 Wh., 131; ² *Ogden v. Saunders*, 12 Wh., 213; ² *Boyle v. Zacharies*, 6 Pet. 348; ² *Beers v. Haughton*, 9 Pet., 329; ² *Suydam v. Broadnax*, 14 Pet., 67; ² *Cook v. Moffat*, 5 How., 295; ² *New Lamp Chimney Co. v. Ansonia Brass Co.*, 91 U. S., 661; ² *U. S. v. Fox*, 95 U. S., 672; ² *Canada Southern Ry. Co. v. Gebhard*, 109 U. S., 539; ² *Butler v. Goreley*, 146 U. S., 304; ² *Hanover National Bank v. Moyses*, 186 U. S., 181; ² *Stellwagen v. Clum*, 245 U. S., 605.

§ 120. Coinage,
weights, and
measures.

⁵ To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Decisions of the Supreme Court of the United States:

§ 121. Decisions of
the court.

Briscoe v. The Bank of the Commonwealth of Kentucky, 11 Pet., 257; *Fox v. The State of Ohio*, 5 How., 410; *United States v. Marigold*, 9 How., 560; *Smith v. Kansas City Title Co.*, 255 U. S., 180.

§ 122. Counter-
feiting.

⁶ To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Decisions of the Supreme Court of the United States:

§ 123. Decisions of
the court.

Fox v. The State of Ohio, 5 How., 410; *United States v. Marigold*, 9 How., 560; *Legal Tender Cases*, 12 Wall., 535.

§ 124. Post-office
and post-roads.

⁷ To establish Post Offices and post Roads;

Decisions of the Supreme Court of the United States:

§ 125. Decisions of
the court.

State of Pennsylvania v. The Wheeling and Belmont Bridge Company, 18 How., 421; *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S., 1; *Ex parte Jackson*, 96 U. S., 727; *In re Rapier*, 143 U. S., 110; *Horner v. United States*, 143 U. S., 207; *In re Debs, Petitioner*, 158 U. S., 564; *Illinois Central Railroad Co. v. Illinois*, 163 U. S., 142; *Gladson v. Minnesota*, 166 U. S., 427; *Public Clearing House v. Coyne*, 194 U. S., 497; *Western Union Telegraph*

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Co. v. Pennsylvania R. R. Co., 185 U. S., 540; *Martin v. Pittsburg & Lake Erie R. R.*, 203 U. S., 284; *Badders v. U. S.*, 240 U. S., 391; *Milwaukee Pub. Co. v. Burleson*, 255 U. S., 407; *Johnson v. Maryland*, 254 U. S., 51.

⁸ To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

§ 126. Patents and copyrights.

Decisions of the Supreme Court of the United States:

Grant et al. *v. Raymond*, 6 Pet., 218; *Wheaton et al. v. Peters et al.*, 8 Pet., 591; *Trade-mark Cases*, 100 U. S., 82; *Burrow Giles Lithographic Co. v. Sarony*, 111 U. S., 53; *United States v. Duell*, 172 U. S., 576; *Dobbs-Merrill Co. v. Straus*, 210 U. S., 339; *Kalem Co. v. Harper*, 222 U. S., 55; *Ferris v. Frohman*, 233 U. S., 424, *Hildreth v. Mastoras*, 257 U. S., 27.

§ 128. Inferior courts.

⁹ To constitute Tribunals inferior to the supreme Court;

§ 129. Piracies and offenses against law of nations.

¹⁰ To define and punish Piracies and Felonies committed on the high seas, and Offences against the Law of Nations;

Decisions of the Supreme Court of the United States:

United States *v. Palmer*, 3 Wh., 610; *United States v. Wiltberger*, 5 Wh., 76; *United States v. Smith*, 5 Wh., 153; *United States v. Pirates*, 5 Wh., 184; *United States v. Arjona*, 120 U. S., 479.

§ 131. Declarations of war and maritime operations.

¹¹ To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Decisions of the Supreme Court of the United States:

Brown *v. United States*, 8 Cr., 110; *American Insurance Company et al. v. Canter* (356 bales cotton); 1 Pet., 511; *Mrs. Aléxander's cotton*, 2 Wall., 404; *Miller v. United States*, 11 Wall., 268; *Tyler v. Defrees*, 11 Wall., 331,

Stewart v. Kahn, 11 Wall., 493; *Hamilton v. Dillon*, 21 Wall., 73; *Lamar, ex., v. Browne et al.*, 92 U. S., 187; *Mayfield v. Richards*, 115 U. S., 137; *The Chinese Exclusion Cases*, 130 U. S., 581; *Mormon Church v. United States*, 136 U. S., 1; *Nishimura Ekiu v. The United States*, 142 U. S., 651; *Selective Draft Law Cases*, 245 U. S., 366; *Northern Pacific R. Co. v. North Dakota*, 250 U. S., 135; *U. S. v. Cohen Grocery Co.*, 255 U. S., 81; *Abrams v. U. S.*, 250 U. S., 616; *Debs v. U. S.*, 249 U. S., 11; *Ruppert v. Caffey*, 251 U. S., 264; *Stoehr v. Wallace*, 255 U. S., 239.

§ 133. Raising and support of armies. ¹² To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Decisions of the Supreme Court of the United States:

§ 134. Decisions of the court. *Crandall v. State of Nevada*, 6 Wall., 35; *Nishimura Ekiu v. The United States*, 142 U. S., 651; *Selective Draft Law Cases*, 245 U. S., 366.

§ 135. Provisions for a navy. ¹³ To provide and maintain a Navy:

Decisions of the Supreme Court of the United States:

§ 136. Decisions of the court. *United States v. Bevans*, 3 Wh., 336; *Dynes v. Hoover*, 20 How., 65.

§ 137. Land and naval forces. ¹⁴ To make Rules for the Government and Regulation of the land and naval Forces;

¹⁵ To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

§ 138. Calling out the militia.

Decisions of the Supreme Court of the United States:

§ 139. Decisions of the court. *Houston v. Moore*, 5 Wh., 1; *Martin v. Mott*, 12 Wh., 19; *Luther v. Borden*, 7 How., 1; *Crandall v. State of Nevada*, 6 Wall., 35; *Texas v. White*, 7 Wall., 700; *Sweetser v. Emerson*, 236 U. S., 366; *Jones v. Perkins*, 245 U. S., 390.

¹⁶ To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the

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States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Decisions of the Supreme Court of the United States:

§ 141. Decisions of the court. *Houston v. Moore*, 5 Wh., 1; *Martin v. Mott*, 12 Wh., 19; *Luther v. Borden*, 7 How., 1; *Presser v. Illinois*, 116 U. S., 252; *Selective Draft Law Cases*, 245 U. S., 366.

§ 142. Power over territory of the United States. ¹⁷ To exercise exclusive Legislation in all Cases whatsoever, over such District, (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the erection of Forts, Magazines, and Arsenals, dock-Yards, and other needful Buildings;—And

Decisions of the Supreme Court of the United States:

§ 143. Decisions of the court. *Hepburn et al. v. Ellzey*, 2 Cr., 444; *Loughborough v. Blake*, 5 Wh., 317; *Cohens v. Virginia*, 6 Wh., 264; *American Insurance Company v. Canter* (356 bales cotton), 1 Pet., 511; *Kendall, Postmaster-General, v. The United States*, 12 Pet., 524; *United States v. Dewitt*, 9 Wall., 41; *Dunphy v. Kleinsmith et al.*, 11 Wall., 610; *Willard v. Presbury*, 14 Wall., 676; *Kohl et al. v. United States*, 91 U. S., 367; *Phillips v. Payne*, 92 U. S., 130; *United States v. Fox*, 94 U. S., 315; *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S., 525; *Gibbons v. District of Columbia*, 116 U. S., 404; *Van Brocklin v. State of Tennessee*, 117 U. S., 151; *Stoutenburgh v. Hennick*, 129 U. S., 141; *Geofroy v. Riggs*, 133 U. S., 258; *Benson v. United States*, 146 U. S., 325; *Shoemaker v. United States*, 147 U. S., 282; *Chappell v. United States*, 160 U. S., 499; *Ohio v. Thomas*, 173 U. S., 276; *Wight v. Davidson*, 181 U. S., 371; *Battle v. United States*, 209 U. S., 36; *Western Union Telegraph Co. v. Chiles*, 214 U. S., 274; *El Paso & Northeastern Ry. Co. v. Gutierrez*, 215 U. S., 87; *Broscoe v. Rudolph*, 221 U. S., 547; *Heald v. D. C.*, 259 U. S., 114; *Block v. Hirsh (Rent Act)*, 256 U. S., 135.

¹⁸ To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Decisions of the Supreme Court of the United States:

§ 145. Decisions of the court. McCulloch v. The State of Maryland, 4 Wh., 316; Wayman v. Southard, 10 Wh., 1; Bank of United States v. Halstead, 10 Wh., 51; Hepburn v. Griswold, 8 Wall., 603; National Bank v. Commonwealth, 9 Wall., 353; Thomson v. Pacific Railroad, 9 Wall., 579; Parker v. Davis, 12 Wall., 457; Railroad Company v. Johnson, 15 Wall., 195; Railroad Company v. Peniston, 18 Wall., 5; United States v. Fox, 95 U. S., 670; United States v. Hall, 98 U. S., 343; Tennessee v. Davis, 100 U. S., 257; Ex parte Curtis, 106 U. S., 371; Legal Tender case, 110 U. S., 421; Stoutenburgh v. Hennick, 129 U. S., 141; The Chinese Exclusion Case, 130 U. S., 581; Crenshaw v. United States, 134 U. S., 99; Cherokee Nation v. Southern Kansas R. R., 135 U. S., 641; Nishimura Ekiu v. The United States, 142 U. S., 651; Field v. Clark, 143 U. S., 649; Logan v. United States, 144 U. S., 263; Fong Yue Ting v. United States, 149 U. S., 698; Lees v. United States, 150 U. S., 476; Interstate Commerce Commission v. Brimson, 154 U. S., 447; Clune v. United States, 159 U. S., 590; Motes v. United States, 178 U. S., 458; Buttfield v. Stranahan, 192 U. S., 470; U. S. v. Barnow, 239 U. S., 74; Bay City First Nat. Bank v. Union Trust Co., 244 U. S., 416; Jacob Ruppert v. Caffey, 251 U. S., 264; Hamilton v. Kentucky Distilleries Co., 251 U. S., 146; U. S. v. Standard Brewery, 251 U. S., 210; Newberry v. U. S., 256 U. S., 232.

SECTION 9. ¹ The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

§ 146. Migration or importation of persons.

Decision of the Supreme Court of the United States:

§ 147. Decision of the court. Dred Scott v. Sanford, 19 How., 393; Oceanic Navigation Co. v. Stranahan, 214 U. S., 320.

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² The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Decisions of the Supreme Court of the United States:

§ 149. Decisions of the court. United States *v.* Hamilton, 3 Dall., 17; Hepburn et al. *v.* Ellzey, 2 Cr., 445; Ex parte Bollman and Swartwout, 4 Cr., 75; Ex parte Kearney, 7 Wh., 38; Ex parte Tobias Watkins, 3 Pet., 192; Ex parte Milburn, 9 Pet., 704; Holmes *v.* Jennison et al., 14 Pet., 540; Ex parte Dorr, 3 How., 103; Luther *v.* Borden, 7 How., 1; Ableman *v.* Booth and United States *v.* Booth, 21 How., 506; Ex parte Vallandigham, 1 Wall., 243; Ex parte Mulligan, 4 Wall., 2; Ex parte McCordle, 7 Wall., 506; Ex parte Yerger, 8 Wall., 85; Tarble's case, 13 Wall., 397; Ex parte Lange, 18 Wall., 163; Ex parte Parks, 93 U. S., 18; Ex parte Karstendick, 93 U. S., 396; Ex parte Virginia, 100 U. S., 339; In re Neagle, 135 U. S., 1; In re Frederick, 149 U. S., 70; United States *v.* Sing Tuck, 194 U. S., 161; United States *v.* Ju Toy, 198 U. S., 253; Carfer *v.* Caldwell, 200 U. S., 293; McNichols *v.* Pease, 207 U. S., 100; Gasquet *v.* Lapeyre, 242 U. S., 367.

§ 150. Bills of attainder and ex post facto laws. ³ No Bill of Attainder or ex post facto Law shall be passed.

Decisions of the Supreme Court of the United States:

§ 151. Decisions of the court. Fletcher *v.* Peck, 6 Cr., 87; Ogden *v.* Saunders, 12 Wh., 213; Watson et al. *v.* Mercer, 8 Pet., 88; Carpenter et al. *v.* Commonwealth of Pennsylvania, 17 How., 456; Locke *v.* New Orleans, 4 Wall., 172; Cummings *v.* The State of Missouri, 4 Wall., 277; Ex parte Garland, 4 Wall., 333; Drehman *v.* Stifle, 8 Wall., 595; Klinger *v.* State of Missouri, 13 Wall., 257; Pierce *v.* Carskadon, 16 Wall., 234; Hopt *v.* Utah, 110 U. S., 547; Cook *v.* United States, 138 U. S., 157; Neely *v.* Henkel (No. 1), 180 U. S., 109; Southwestern Coal Co. *v.* McBride, 185 U. S., 499; Delamater *v.* South Dakota, 205 U. S., 93; Briga-jewitz *v.* Adams, 228 U. S., 585; Johannessen *v.* U. S., 225 U. S., 227.

⁴ No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

§ 152. Capitation and direct taxes. This provision was changed in 1913 by the Sixteenth Amendment to the Constitution.

Decisions of the Supreme Court of the United States:

§ 153. Decisions of the court. License Tax Cases, 5 Wall., 462; *Springer v. United States*, 102 U. S., 586; *Pollock v. Farmers', etc., Co.*, 157 U. S., 573, and 158 U. S., 601; *Nichol v. Ames*, 173 U. S., 599; *South Carolina v. United States*, 199 U. S., 437; *Eisner v. Macomber*, 252 U. S., 189.

§ 154. Export duties.

⁵ No Tax or Duty shall be laid on Articles exported from any State.

Decisions of the Supreme Court of the United States:

§ 155. Decisions of the court. *Cooley v. Board of Wardens of Port of Philadelphia*, 12 How., 299; *Pace v. Burgess*, collector, 92 U. S., 372; *Turpin v. Burgess*, 117 U. S., 504; *Pittsburg & Southern Coal Co. v. Bates* 156 U. S., 577; *Nichols v. Ames*, 173 U. S., 509; *Williams v. Fears*, 179 U. S., 270; *De Lima v. Bidwell*, 182 U. S., 1; *Dooley v. United States*, 183 U. S., 151; *Fourteen Diamond Rings v. United States*, 183 U. S., 176; *Cornell v. Coyne*, 192 U. S., 418; *South Carolina v. United States*, 199 U. S., 437; *Armour Packing Co. v. United States*, 209 U. S., 56; *Thames, etc., Ins. Co. v. U. S.*, 237 U. S., 19; *Peck v. Lowe*, 247 U. S., 165.

§ 156. Freedom of commerce. ⁶ No preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Decisions of the Supreme Court of the United States:

§ 157. Decisions of the court. *Cooley v. Board of Wardens of Port of Philadelphia et al.*, 12 How., 299; *State of Pennsylvania v. Wheeling and Belmont Bridge Company et al.*, 18 How., 421; *Munn v. Illinois*, 94 U. S., 113; *Packet Co. v. St. Louis*, 100 U. S., 423; *Packet Co. v. Cattlettsburg*, 105 U. S., 559; *Sprague v. Thompson*, 118 U. S., 90; *Morgan v. Louisiana*, 118 U. S., 455; *Johnson v. Chicago & Pacific Elevator Co.*, 119 U. S., 388; *South Carolina v. United States*, 199 U. S., 437; *Armour Packing Co. v. United States*, 209 U. S., 56.

§ 158. Appropriations and accounting of public money. ⁷ No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

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Decisions of the courts and opinions of Attorneys General:

Campagna v. U. S. (1891), 26 Ct. Cl., 317; *Hart v. U. S.*, 118 U. S., 62; *Reeside v. Walker*, 11 How., 272; *U. S. v. Realty Co.*, 163 U. S., 440; *Collins' Case* (1879), 15 Ct. Cl., 35; *Knote v. U. S.*, 95 U. S., 154; *Choctaw Indians*, 13 Op. Atty. Gen., 354; *Great Western Ins. Co. v. U. S.*, 19 Ct. Cl., 206; *Mitchell v. U. S.*, 18 Ct. Cl., 286; *Contracts for Extension of Capitol*, 6 Op. Atty. Gen., 28; *U. S. v. Hanson*, 167 Fed., 881; *Expenditures in Kansas*, 8 Op. Atty. Gen., 137.

§ 159. Titles of nobility and gifts from foreign states. No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Opinions of Attorneys General:

Gifts from Foreign Prince (1902), 24 Op. Atty. Gen., 117; *Foreign Diplomatic Commission* (1871), 13 Op. Atty. Gen., 538; *Marshal of Florida* (1854), 6 Op. Atty. Gen., 409.

SECTION 10. ¹No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; ¹make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law,² or Law impairing the Obligation of Contracts,³ or grant any Title of Nobility.

Decisions of the Supreme Court of the United States:

§ 161. Decisions of the court. ¹ *Virginia Coupon Cases*, 114 U. S., 269; ¹ *Houston R. Co. v. Texas*, 177 U. S., 87; ¹ *Wesley v. Eells*, 177 U. S., 375; ² *Legal Tender Case*, 110 U. S., 446; ² *Cummings v. Mo.*, 4 Wall., 323; ² *Duncan v. Mo.*, 152 U. S., 382; ² *Frank v. Mangum*, 237 U. S., 309; ² *Ross v. Oregon*, 227 U. S., 150; ² *Watson v. Mercer*, 8 Pet., 110; ² *Fletcher v. Peck*, 6 Cranch, 138; ² *Rooney v. North Dakota*, 196 U. S., 324; ² *Kring v. Missouri*, 107 U. S., 232; ² *Jaehne v. New York*, 128 U. S., 190; ² *Waters-Pierce Oil Co. v. Texas*, 212 U. S., 86; ² *Chicago, etc., R. Co. v. Tranbarger*, 238 U. S., 67; ² *Reetz v. Mich.*, 188

U. S., 509; ² *Thompson v. Missouri*, 171 U. S., 381; ² *McDonald v. Mass.*, 180 U. S., 311; ² *Malloy v. S. C.*, 237 U. S., 180; ² *Thompson v. Utah*, 170 U. S., 343; ³ *Great Northern R. Co. v. Minnesota*, 246 U. S., 434; ³ *Central of Georgia R. Co. v. Wright*, 248 U. S., 525; ³ *Pa. Hospital v. Philadelphia*, 245 U. S., 20; ³ *Hendrickson v. Apperson*, 245 U. S., 105; ³ *Northern Ohio Traction Co. v. Ohio*, 245 U. S., 574; ³ *Denver R. Co. v. Denver*, 250 U. S., 241; ³ *Detroit R. Co. v. Detroit*, 248 U. S., 429; ³ *Union Dry Goods Co. v. Georgia Pub. Service Corp.*, 248 U. S., 372; ³ *Mo. Min. Co. v. Greenwood Dist.*, 249 U. S., 170; ³ *Columbus R. Co. v. Columbus*, 249 U. S., 399; ³ *Aikins v. Kingsbury*, 247 U. S., 484; ³ *Hays v. Port of Seattle*, 251 U. S., 233; ³ *Producers Transp. Co. v. Railroad Comm.*, 251 U. S., 228; ³ *Hardin-Wyandot Co. v. Upper Sandusky*, 251 U. S., 173; ³ *Los Angeles v. Los Angeles Gas Co.*, 251 U. S., 32; ³ *Okla. Ry. v. Severns Pav. Co.*, 251 U. S., 104; *Pac. Gas Co. v. Police Court*, 251 U. S., 22.

² No State shall, without the Consent of the Congress, lay any Impost or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

§ 162. States not to lay impost or duties.

Decisions of the Supreme Court of the United States:

§ 163. Decisions of the court.

McCulloch v. State of Maryland, 4 Wh., 316; *Gibbons v. Ogden*, 9 Wh., 1; *Brown v. The State of Maryland*, 12 Wh., 419; *Mager v. Grima et al.*, 8 How., 490; *Cooley v. Board of Wardens of Port of Philadelphia et al.*, 12 How., 299; *Almy v. State of California*, 24 How., 169; *License Tax Cases*, 5 Wall., 462; *Crandall v. State of Nevada*, 6 Wall., 35; *Waring v. The Mayor*, 8 Wall., 110; *Woodruff v. Perham*, 8 Wall., 123; *Hinson v. Lott*, 8 Wall., 148; *State Tonnage Tax Cases*, 12 Wall., 204; *State Tax on railway gross receipts*, 15 Wall., 284; *Inman Steamship Company v. Tinker*, 94 U. S., 238; *Cook v. Pennsylvania*, 97 U. S., 566; *Packet Co. v. Keokuk*, 95 U. S., 80; *People v. Campagne Général Transatlantique*, 107 U. S., 59; *Turner v. Maryland*, 107 U. S., 38; *Brown et al. v. Houston, Collector, et al.*, 114 U. S., 622; *Coe v. Errol*, 116 U. S., 517; *Turpin v. Burgess*, 117 U. S., 504; *Pittsburg & Southern Coal Co. v. Bates*, 156 U. S., 577; *Pittsburg & Southern Coal Co. v. Louisiana*, 156 U. S., 590; *Scott v. Donald*, 165 U. S., 58; *Patap-*

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3co Guano Co. v. North Carolina, 171 U. S., 345; *May & Co. v. New Orleans*, 178 U. S., 496; *Dooley v. United States*, 183 U. S., 151; *Cornell v. Coyne*, 192 U. S., 418; *American Steel & Wire Co. v. Speed*, 192 U. S., 500; *Dela-ware, L., &c., R. R. Co. v. Pennsylvania*, 198 U. S., 341; *McLean v. Denver & Rio Grande R. R.*, 203 U. S., 38; *Selliger v. Kentucky*, 213 U. S., 200; *Hebe Co. v. Shaw*, 248 U. S., 297.

§ 164. States not to lay tonnage taxes, make compacts, or go to war.

³ No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into an Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Decisions of the Supreme Court of the United States:

§ 165. Decisions of the court.

Green v. Biddle, 8 Wh., 1; *Poole et al. v. The Lessee of Fleegee et al.*, 11 Pet., 185; *Cooley v. Board of Wardens of Port of Philadelphia et al.*, 12 How., 299; *Peete v. Morgan*, 19 Wall., 581; *Cannon v. New Orleans*, 20 Wall., 577; *Inman Steamship Company v. Tinker*, 94 U. S., 238; *Transportation Co. v. Wheeling*, 99 U. S., 273; *Packet Co. v. St. Louis*, 100 U. S., 423; *Packet Co. v. Keokuk*, 95 U. S., 80; *Vicksburg v. Tobin*, 100 U. S., 430; *Packet Co. v. Catlettsburg*, 105 U. S., 559; *Wiggins Ferry Co. v. East St. Louis*, 107 U. S., 365; *Transportation Company v. Parkersburg*, 107 U. S., 691; *Presser v. Illinois*, 116 U. S., 252; *Morgan v. Louisiana*, 118 U. S., 455; *Huse v. Glover*, 119 U. S., 543; *Ouachita Packet Co. v. Aiken*, 121 U. S., 444; *Indiana v. Kentucky*, 136 U. S., 479; *Virginia v. Tennessee*, 148 U. S., 503; *Wharton v. Wise*, 153 U. S., 155; *St. Louis & San Francisco Railway Co. v. James*, 161 U. S., 545; *Selective Draft Law Cases*, 245 U. S., 366.

ARTICLE II.

SECTION 1. ¹ The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four years, and together with the Vice President, chosen for the same Term, be elected, as follows:

§ 166. Terms of the President and Vice-President.

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The two Houses of the first Congress, after examination, found that by provisions made in the Federal Convention and by the Continental Congress, the term of the first President began March 4, 1789 (I, 3). When March 4 falls on Sunday, the inauguration of the President of the United States occurs at noon, March 5 (III, 1996).

Decisions of the Supreme Court of the United States:
 § 167. Decisions of the court. *Field v. Clark*, 143 U. S., 649; *Garfield v. Goldsby*, 211 U. S., 249; *Monongahela Bridge Co. v. United States*, 216 U. S., 177; *United States v. Grimaud*, 216 U. S., 614; *Runkle v. U. S.*, 122 U. S., 557; *Kendall v. U. S.*, 12 Pet., 610.

§ 168. Electors of President and Vice-President and their qualifications. ² Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Questions of the qualifications of electors have arisen, and in one instance certain ones were found disqualified, but as their number was not sufficient to affect the result and as there was doubt as to what tribunal should pass on the question the votes were counted (III, 1941). In other cases there were objections, but the votes were counted (III, 1972-1974, 1979). In one instance an elector found to be disqualified resigned both offices, whereupon he was made eligible to fill the vacancy thus caused among the electors (III, 1975).

Decisions of the Supreme Court of the United States:
 § 169. Decisions of the court. *Chisholm, ex., v. Georgia*, 2 Dall., 419; *Leitensdorfer et al. v. Webb*, 20 How., 176; *Ex parte Siebold*, 100 U. S., 271; *In re Green*, 134 U. S., 377; *McPherson v. Blacker*, 146 U. S., 1.

§ 170. Time of choosing electors and time at which their votes are given. ³ The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

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The time for choosing electors has been fixed on "the Tuesday next after the first Monday in November, in every fourth year;" and the electors in each State "meet and give in their votes on the second Monday in January next following their appointment, at such place in each State as the legislature of such State shall direct." (III, 1914.) The statutes also provide for transmitting to the President of the Senate certificates of the appointment of the electors and of their votes (III, 1915-1917).

§ 171. Decision of the court. Decision of the Supreme Court of the United States:
In re Green, 134 U. S., 377.

⁴ No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

§ 172. Qualifications of President of the United States. Decision of the Supreme Court of the United States:
English v. The Trustees of the Sailors' Snug Harbor,
3 Pet., 99.

⁵ In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

§ 174. Succession in case of removal, death, resignation, or disability of President and Vice-President.

⁶ The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

⁷ Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

The taking of this oath, which is termed the inauguration, is made the occasion of certain simple ceremonies which are arranged for by a joint committee of the two Houses (III, 1998, 1999). The oath is taken at the east portico of the Capitol, although in earlier years it was taken in the Senate Chamber or Hall of the House (III, 1986-1995). And when Vice-President Fillmore succeeded to the vacancy in the office of President, Congress being in session, he took the oath in the Hall of the House in the presence of the Senate and House (III, 1997).

§ 177. Decision of the court.

Decision of the Supreme Court of the United States: In re Neagle, 135 U. S., 1.

SECTION 2. ¹ The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the

§ 178. The President the Commander in Chief.

§ 179. Opinions of the President's advisers.

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Duties of their respective Offices, and he shall have power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

§ 180. President grants reprieves and pardons.

Decisions of the Supreme Court of the United States:

United States *v.* Wilson, 7 Pet., 150; *Ex parte* William Wells, 18 How., 307; *Ex parte* Garland, 4 Wall., 333; *Armstrong's Foundry*, 6 Wall., 766; *The Grape Shot*, 9 Wall., 129; United States *v.* Padelford, 9 Wall., 542; United States

§ 181. Decisions of the court.

v. Klein, 13 Wall., 128; *Armstrong v. The United States*, 13 Wall., 152; *Pargoud v. The United States*, 13 Wall., 156; *Hamilton v. Dillin*, 21 Wall., 73; *Mechanics and Traders' Bank v. Union Bank*, 22 Wall., 276; *Lamar, ex. v. Browne et al.*, 92 U. S., 187; *Wallach et al. v. Van Riswick*, 92 U. S., 202; *Eustis v. Bolles*, 150 U. S., 361; *Burdick v. U. S.*, 236 U. S., 79.

² He shall have Power, by and with the Advice and

§ 182. President makes treaties.

Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and

§ 183. Appointing power of the President.

Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Decisions of the Supreme Court of the United States:

Ware v. Hylton et al., 3 Dall., 199; *Marbury v. Madison*, 1 Cr., 137; United States *v.* Kirkpatrick, 9 Wh., 720; *American Insurance*

§ 184. Decisions of the court.

Company v. Canter (356 bales cotton), 1 Pet., 511; *Foster and Elam v. Neilson*, 2 Pet., 253; *Cherokee Nation v. State of Georgia*, 5 Pet., 1; *Patterson v. Gwinn et al.*, 5 Pet., 233; *Worcester v. State of Georgia*, 6 Pet., 515; *City of New Orleans v. De Armas et al.*, 9 Pet., 224; *Holden v. Joy*, 17 Wall., 211; United States *v.* Germaine, 99 U. S., 508; United States *v.* Corson, 114 U. S., 619; United States *v.* Perkins, 116 U. S., 483; United States *v.* Rauscher, 119 U. S., 407; *Mormon*

Church v. United States, 136 U. S., 1; *Field v. Clark*, 143 U. S., 649; *Shoemaker v. United States*, 147 U. S., 282; *Parsons v. United States*, 167 U. S., 324; *Rice v. Ames*, 180 U. S., 371; *Fourteen Diamond Rings v. United States*, 183 U. S., 176; *Dorr v. United States*, 195 U. S., 138; *Kelly v. Griffin*, 241 U. S., 6; *Glucksman v. Henkel*, 221 U. S., 508; *Lamar v. U. S.*, 240 U. S., 60, and 241 U. S., 103; *Wallace v. U. S.*, 257 U. S., 541.

³ The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

§ 185. President's power to fill vacancies during recess of the Senate.

Decisions of the Supreme Court of the United States:

§ 186. Decisions of the court.

The United States v. Kirkpatrick et al., 9 Wh., 720; *U. S. v. Harsha*, 172 U. S., 572.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; * * *

§ 187. Messages from the President.

In the early years of the Government the President made a speech to Congress on its assembling (II, 1139; V, 6629); but in 1801 President Jefferson discontinued this practice and transmitted a message "in writing," and this precedent was followed until April 8, 1913, when the custom of addressing Congress in person was reestablished by President Wilson and continued by Presidents Harding and Coolidge. Only messages of major importance are delivered in person. Most of them are transmitted in writing. A message in writing is usually communicated to both Houses on the same day, but an original document accompanying can of course be sent to but one House (V, 6616, 6617). In early years confidential messages were often sent and considered in secret session of the House (V, 7251, 7252).

When the President has indicated that he will address Congress in person a concurrent resolution is passed by both Houses arranging for a joint session to receive the message. At the appointed hour the Members of the Senate arrive and occupy the three front rows of the House. The presiding officer of the Senate sits at the right of the Speaker, who presides at the session.

The ceremony of receiving a message in writing is simple (V, 6591), and may occur during consideration of a question of privilege (V, 6640-6642) or before the organization of the House (V, 6647-6649). But, with the exception of vetoes, messages are regularly laid before the House only at the time prescribed by the rule for the order of

§ 188. Reception of messages from the President.

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business (V, 6635-6638). While a message of the President is always read in full the latest rulings have not permitted the reading of the accompanying documents to be demanded as a matter of right (V, 5267-5271).

* * * he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; * * *

§ 189. Power of President as to convening and adjourning Congress.

In certain exigencies the President may convene Congress at a place other than the seat of government (I, 2). Congress has frequently been convened by the President (I, 10, 11), and in one instance, when Congress had provided by law for meeting, the President called it together on an earlier day (I, 12). The statutes provide that in case of the removal, death, resignation, or inability of both President and Vice-President during a recess of Congress the Secretary who acts as President shall convene Congress in extraordinary session (I, 13). There has been some discussion as to whether or not there is a distinction between a session called by the President and other sessions of Congress (I, 12, footnote).

* * * he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the officers of the United States.

§ 190. President receives ambassadors, executes the laws, and commissions officers.

Decisions of the Supreme Court of the United States:

§ 191. Decisions of the court.

Marbury v. Madison, 1 Cr., 137; Kendall, Postmaster-General, v. The United States, 12 Pet., 524; Luther v. Borden, 7 How., 1; The State of Mississippi v. Johnson, President, 4 Wall., 475; Stewart v. Kahn, 11 Wall., 493; In re Neagle, 135 U. S., 1.

SECTION 4. The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

§ 192. Impeachment of civil officers.

In the Blount trial the managers contended that all citizens of the United States were liable to impeachment, but this contention was not admitted (III, 2315), and in the Belknap trial both managers and counsel for respondent agreed that a private citizen, apart from offense in an office, might not be impeached (III, 2007). But resignation of the office does not prevent impeachment for crime or misdemeanor therein (III, 2007, 2317, 2444, 2445, 2459, 2509). In Blount's case it was decided that a Senator was not a civil officer within the meaning of the impeachment provisions of the Constitution (III, 2310, 2316). Questions have also arisen as to whether or not the Congressional Printer (III, 1785), or a vice-consul-general (III, 2515), might be impeached. Proceedings for the impeachment of territorial judges have been taken in several instances (III, 2486, 2487, 2488), although various opinions have been given that such an officer is not impeachable (III, 2022, 2486, 2493).

As to what are impeachable offenses there has been much discussion (III, 2008, 2019, 2020, 2356-2362, 2379-2381, 2405, 2406, 2410, 2498). For a time the theory that indictable offenses only were impeachable was stoutly maintained and as stoutly denied (III, 2356, 2360-2362, 2379-2381, 2405, 2406, 2410, 2416); but on the tenth and eleventh articles of the impeachment of the President the House concluded to impeach for other than indictable offenses (III, 2418), and in the Swayne trial the theory was definitely abandoned (III, 2019). While there has not been definite concurrence in the claim of the managers in the trial of the President that an impeachable offense is any misbehavior that shows disqualification to hold and exercise the office, whether moral, intellectual, or physical (III, 2015), yet the House has impeached judges for improper personal habits (III, 2328, 2505), and in the impeachment of the President one of the articles charged him with "intemperate, inflammatory, and scandalous harangues" in public addresses, tending to the harm of the Government (III, 2420). There was no conviction under these charges except in the single case of Judge Pickering, who was charged with intoxication on the bench (III, 2328, 2341). As to the impeachment of judges for other delinquencies, there has been much contention as to whether they may be impeached for any breach of good behavior (III, 2011, 2016, 2497), or only for judicial misconduct occurring in the actual administration of justice in connection with the court (III, 2010, 2013, 2017). The intent of the judge (III, 2014, 2382) as related to mistakes of the law, and the relations of intent to conviction have been discussed at length (III, 2014, 2381, 2382, 2518, 2519). The statutes make nonresidence of a judge an impeachable offense, and the House has

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taken steps to impeach for this cause (III, 2476, 2512). There has, however, been some question as to the power of Congress to make an impeachable offense (III, 2014, 2015, 2021, 2512). Usurpation of power has been examined several times in its relations as a cause for impeachment (III, 2404, 2508, 2509, 2516, 2517). There has also been discussion as to whether or not there is distinction between a misdemeanor and a high misdemeanor (III, 2270, 2367, 2492).

§ 195. Decisions of the Supreme Court of the United States:
the court. Langford *v.* United States, 101 U.S., 341; Shurtleff *v.* U. S., 189 U. S., 311.

ARTICLE III.

SECTION 1. The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Decisions of the Supreme Court of the United States:

§ 197. Decisions of the court. Chisholm, *ex.*, *v.* Georgia, 2 Dall., 419; Stuart *v.* Laird, 1 Cr., 299; United States *v.* Peters, 5 Cr., 115; Cohens *v.* Virginia, 6 Cr., 264; Martin *v.* Hunter's Lessee, 1 Wh., 304; Osborn *v.* United States Bank, 9 Wh., 738; Benner *et al.* *v.* Porter, 9 How., 235; The United States *v.* Ritchie, 17 How., 525; Murray's Lessee *et al.* *v.* Hoboken Land and Improvement Company, 18 How., 272; *Ex parte* Vallandigham, 1 Wall., 243; Pennoyer *v.* Neff, 95 U. S., 714; United States *v.* Union Pacific Railroad Co., 98 U. S., 569; Mitchell *v.* Clark, 110 U. S., 633; Ames *v.* Kansas, 111 U. S., 449; *In re* Loney, 134 U. S., 373; *In re* Green, 134 U. S., 377; McAllister *v.* United States, 141 U. S., 174; Robertson *v.* Baldwin, 165 U. S., 275; Hanover National Bank *v.* Moyses, 186 U. S., 181; Turner *v.* Williams, 194 U. S., 279; *Ex parte* Wisner, 203 U. S., 449; Interstate Commerce Commission *v.* Illinois Cent. R. Co., 215 U. S., 452; Muskrat *v.* U. S., 219 U. S., 346; U. S. *v.* Evans, 213 U. S., 297; Johannessen *v.* U. S., 225 U. S., 227; Oceanic Steam Nav. Co. *v.* Thranahan, 214 U. S., 320.

SECTION 2. ¹The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority¹;—to all cases affecting Ambassadors, other public Ministers and Consuls²;—to all Cases of admiralty and maritime Jurisdiction³;—to Controversies to which the United States shall be a Party⁴;—to Controversies between two or more States⁵;—between a State and Citizens of another State⁶;—between Citizens of different States⁷;—between Citizens of the same State claiming lands under Grants of different States⁸, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects⁹.

Recent decisions of the Supreme Court of the United States:

§ 199. Decisions of the court.

⁵Missouri v. Illinois, 180 U. S., 208; Eastern Building Association v. Welling, 181 U. S., 47; Dooley v. United States, 182 U. S., 222; Tullock v. Mulvane, 184 U. S., 497; Patton v. Brady, 184 U. S., 608; ⁵Kansas v. Colorado, 185 U. S., 125; ¹Swafford v. Templeton, 185 U. S., 487; ¹Mobile Transportation Co. v. Mobile, 187 U. S., 479; ¹Andrews v. Andrews, 188 U. S., 14; ¹Hooker v. Los Angeles, 188 U. S., 314; ¹Cummings v. Chicago, 188 U. S., 410; ¹Schaefer v. Werling, 188 U. S., 516; ³The Roanoke, 189 U. S., 185; ¹Detroit, &c., Ry. v. Osborn, 189 U. S., 383; ³Patterson v. Bark Eudora, 190 U. S., 169; ¹Howard v. Fleming, 191 U. S., 126; ¹, ⁷Arbuckle v. Blackburn, 191 U. S., 405; ¹Deposit Bank v. Frankfort, 191 U. S., 499; ¹, ⁷Spencer v. Duplan Silk Co., 191 U. S., 526; ¹Wabash R. R. Co. v. Pearce, 192 U. S., 179; ¹Rogers v. Alabama, 192 U. S., 226; ⁵South Dakota v. North Carolina, 192 U. S., 286; ¹Bankers' Casualty Co. v. Minn., St. P., &c., Ry., 192 U. S., 371; ¹Spreckels Sugar Refining Co. v. McClain, 192 U. S., 397; ⁷Minnesota v. Northern Securities Co., 194 U. S., 48; ¹Pacific Electric Ry. Co. v. Los Angeles, 194 U. S., 112; ¹Hooker v. Burr, 194 U. S., 415; ¹Cleveland v. Cleveland City Ry. Co., 194 U. S., 517; ⁷Traction Company v. Mining Co., 196 U. S., 239;

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⁷*Dawson v. Columbia Trust Co.*, 197 U. S., 178; ⁸*Jacobson v. Massachusetts*, 197 U. S., 11; ¹*Leonard v. Vicksburg, &c., R. R. Co.*, 198 U. S., 416; ⁷*Farrell v. O'Brien*, 199 U. S., 89; ¹*South Carolina v. United States*, 199 U. S., 437; ¹*Carfer v. Caldwell*, 200 U. S., 293; ⁷*Security Mutual Life Ins. Co. v. Prewitt*, 202 U. S., 246; ⁸*Kansas v. United States*, 204 U. S., 331; ¹*The Winnebago*, 205 U. S., 354; ¹*Lee v. New Jersey*, 207 U. S., 67; *St. Louis & Iron Mountain Railway v. Taylor*, 210 U. S., 281; ¹*Berea College v. Kentucky*, 211 U. S., 45; ¹*North American Cold Storage Co. v. Chicago*, 211 U. S., 306; ¹*Waters-Pierce Oil Co. v. Texas*, 212 U. S., 112; *Wilcox v. Consolidated Gas Co.*, 212 U. S., 19; ¹*American Express Co. v. Mullins*, 212 U. S., 311; *Bonner v. Gorman*, 212 U. S., 86; ¹*Atchison, Topeka & Santa Fe Ry. v. Sowers*, 213 U. S., 55; ¹*Adams Express Co. v. Kentucky*, 214 U. S., 218; ¹*Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S., 320; ¹*Goodrich v. Ferris*, 214 U. S., 71; ¹*Smithsonian Institution v. St. John*, 214 U. S., 19; ¹*Western Union Telegraph Co. v. Chiles*, 214 U. S., 274; ¹*El Paso & Northeastern Ry. Co. v. Gutierrez*, 215 U. S., 87; ¹*Weems v. United States*, 217 U. S., 349; *Virginia v. West Virginia*, 246 U. S., 565; *Hamilton v. Kentucky Distilleries Co.*, 251 U. S., 146.

² In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Decisions of the Supreme Court of the United States:

§ 201. Decisions of the court.

Chisholm, ex. v. Georgia, 2 Dall., 419; *Wiscart et al. v. Dauchy*, 3 Dall., 221; *Marbury v. Madison*, 1 Cr., 137; *Durousseau et al. v. United States*, 6 Cr., 307; *Martin v. Hunter's Lessee*, 1 Wh., 304; *Cohens v. Virginia*, 6 Wh., 234; *Ex parte Kearney*, 7 Wh., 38; *Wayman v. Southard*, 10 Wh., 1; *Bank of the United States v. Halstead*, 10 Wh., 51; *United States v. Ortega*, 11 Wh., 467; *The Cherokee Nation v. The State of Georgia*, 5 Pet., 1; *Ex parte Crane et al.*, 5 Pet., 189; *The State of New Jersey v. The State of New York*, 5 Pet., 283; *Ex parte Sibbald v. United*

States, 12 Pet., 488; *The State of Rhode Island v. The State of Massachusetts*, 12 Pet., 657; *State of Pennsylvania v. The Wheeling, &c., Bridge Company*, 13 How., 518; *In re Kaine*, 14 How., 103; *Ableman v. Booth and United States v. Booth*, 21 How., 506; *Freeborn v. Smith*, 2 Wall., 160; *Ex parte McCardle*, 6 Wall., 318; *Ex parte McCardle*, 7 Wall., 506; *Ex parte Yerger*, 8 Wall., 85; *The Lucy*, 8 Wall., 307; *The Justices v. Murray*, 9 Wall., 274; *Pennsylvania v. Quicksilver Company*, 10 Wall., 553; *Murdock v. City of Memphis*, 20 Wall., 590; *The "Francis Wright,"* 105 U. S., 381; *Börs v. Preston*, 111 U. S., 252; *Ames v. Kansas*, 111 U. S., 449; *Craig v. Leitensdorfer*, 127 U. S., 764; *Wisconsin v. Pelican Ins. Co.*, 127 U. S., 265; *United States v. Texas*, 143 U. S., 621; *Louisiana v. Texas*, 176 U. S., 1; *Wilkes County v. Coler*, 180 U. S., 506; *W. W. Cargill Co. v. Minnesota*, 180 U. S., 452; *Mallett v. North Carolina*, 181 U. S., 589; *United States v. Bitty*, 208 U. S., 393; *Oklahoma v. Gulf, etc., R. Co.*, 220 U. S., 290; *Virginia v. West Virginia*, 220 U. S., 1; *Duhne v. New Jersey*, 251 U. S., 311.

§ 202. Places of trial of crimes by jury.

³ The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Decisions of the Supreme Court of the United States:

§ 203. Decisions of the court.

Ex parte Milligan, 4 Wall., 2; *Barton v. Barbour*, 104 U. S., 126; *Ex parte Wall*, 107 U. S., 265; *Callan v. Wilson*, 127 U. S., 540; *Nashville, Chattanooga, etc., Railway v. Alabama*, 128 U. S., 96; *Eilenbecker v. Plymouth County*, 134 U. S., 31; *Jones v. United States*, 137 U. S., 202; *Cook v. United States*, 138 U. S., 157; *In re Ross*, 140 U. S., 453; *Fong Yu Ting v. United States*, 149 U. S., 698; *In re Debs, petitioner*, 158 U. S., 564; *Thompson v. Utah*, 170 U. S., 343; *Schick v. United States*, 195 U. S., 65; *Dorr v. United States*, 195 U. S., 138; *Matter of Strauss*, 197 U. S., 324; *Marvin v. Trout*, 199 U. S., 212; *Martin v. Texas*, 200 U. S., 316; *Tinsley v. Treat*, 205 U. S., 20; *Armour Packing Co. v. United States*, 209 U. S., 56; *Haas v. Henkel*, 216 U. S., 462.

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SECTION. 3. ¹ Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

§ 204. Treason against the United States.

Decisions of the Supreme Court of the United States:

United States *v.* The Insurgents, 2 Dall., 335;
§ 205. Decisions of the court. United States *v.* Mitchell, 2 Dall., 348; *Ex parte* Bollman and Swartwout, 4 Cr., 75; United States *v.* Aaron Burr, 4 Cr., 469.

² The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the person Attainted.

§ 206. Punishment for treason.

Decisions of the Supreme Court of the United States:

Bigelow *v.* Forest, 9 Wall., 339; Day *v.* Micou, 18 Wall., 156; *Ex parte* Lange, 18 Wall., 163; Wallach et al. *v.* Van Riswick, 92 U. S., 202.
§ 207. Decisions of the court.

ARTICLE IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

§ 208. Each State to give credit to acts, records, etc., of other States.

Decisions of the Supreme Court of the United States:

§ 209. Decisions of the court. *Mills v. Duryee*, 7 Cr., 481; *Hampton v. McConnel*, 3 Wh., 234; *Mayhew v. Thatcher*, 6 Wh., 129; *Darby's Lessee v. Mayer*, 10 Wh., 465; *The United States v. Amedy*, 11 Wh., 392; *Caldwell et al. v. Carrington's heirs*, 9 Pet., 86; *M'Elmoyle v. Cohen*, 13 Pet., 312; *The Bank of Augusta v. Earle*, 13 Pet., 519; *Bank of the State of Alabama v. Dalton*, 9 How., 522; *D'Arcy v. Ketchum*, 11 How., 165; *Christmas v. Russell*, 5 Wall., 290; *Green v. Van Burskirk*, 7 Wall., 139; *Paul v. Virginia*, 8 Wall., 168; *Board of Public Works v. Columbia College*, 17 Wall., 521; *Thompson v. Whitman*, 18 Wall., 457; *Pennoyer v. Nebb*, 95 U. S., 714; *Bonaparte v. Tax Court*, 104 U. S., 592; *Robertson v. Pickrell*, 109 U. S., 608; *Brown et al. v. Houston, Collector, et al.*, 114 U. S., 622; *Hanley v. Donoghue*, 116 U. S., 1; *Renaud v. Abbott*, 116 U. S., 277; *Chicago & Alton R. R. v. Wiggins Ferry Co.*, 119 U. S., 615; *Borer v. Chapman*, 119 U. S., 587; *Cole v. Cunningham*, 133 U. S., 107; *Blount v. Walker*, 134 U. S., 607; *Simmons v. Saul*, 138 U. S., 439; *Reynolds v. Stockton*, 140 U. S., 254; *Carpenter v. Strange*, 141 U. S., 87; *Huntington v. Attrill*, 146 U. S., 657; *Glenn v. Garth*, 147 U. S., 360; *Laing v. Rigney*, 160 U. S., 531; *Chicago, Rock Island & Pacific Railway Co. v. Sturm*, 174 U. S., 710; *Thormann v. Frame*, 176 U. S., 350; *Hancock National Bank v. Farnum*, 176 U. S., 640; *Clarke v. Clarke et al.*, 178 U. S., 186; *Wilkes County v. Coler*, 180 U. S., 506; *W. W. Cargill Co. v. Minnesota*, 180 U. S., 452; *Johnson v. New York Life Ins. Co.*, 187 U. S., 491; *Andrews v. Andrews*, 188 U. S., 14; *Blackstone v. Miller*, 188 U. S., 189; *Finney v. Guy*, 189 U. S., 335; *Anglo-American Provision Co. v. Davis Provision Co.*, 191 U. S., 373; *Wabash R. R. Co. v. Flannigan*, 192 U. S., 29; *German Savings Society v. Dormitzer*, 192 U. S., 125; *Wedding v. Meyler*, 192 U. S., 573; *National Mutual Building and Loan Ass. v. Braham*, 193 U. S., 635; *Minnesota v. Northern Securities Co.*, 194 U. S., 48; *National Exchange Bank v. Wiley*, 185 U. S., 257; *Jaster v. Currie*, 198 U. S., 144; *Harding v. Harding*, 198 U. S., 317; *Harris v. Balk*, 198 U. S., 215; *Louisville & Nashville R. R. v. Deer*, 200 U. S., 176; *Haddock v. Haddock*, 201 U. S., 562; *Northern Assurance Co. v. Grand View Building Association*, 203 U. S., 106; *Wetmore v. Karrick*, 205 U. S., 141; *Old Wayne Life Association v. McDonough*, 204 U. S., 8; *Tilt v. Kelsey*, 207 U. S., 43; *Brown v. Fletcher's Estate*, 210 U. S., 82; *Fauntleroy v. Lum*, 210 U. S., 230; *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 213 U. S., 55; *Everett v. Everett*, 215 U. S., 203; *Fall v. Eastin*, 215 U. S., 1; *Olmsted v. Olmsted*, 216 U. S., 386; *Tennessee Coal, etc., Co. v. George*, 233 U. S., 354; *Supreme Council of Royal Arcanum v. Green*, 237 U. S., 531; *Aetna Life Ins. Co. v. Tremblay*, 223 U. S., 185; *West Side Belt Co. v. Pittsburgh Constr. Co.*, 219 U. S., 92; *Michigan Trust Co. v. Ferry*, 228 U. S., 346; *Thompson v. Thompson*, 226 U. S., 551; *Wells, Fargo & Co.*

CONSTITUTION OF THE UNITED STATES.

§§ 210-212.

v. Ford, 238 U. S., 503; *Hood v. McGehee*, 237 U. S., 611; *Burbank v. Ernst*, 232 U. S., 162; *Sistare v. Sistare*, 218 U. S., 11; *Converse v. Hamilton*, 224 U. S., 243; *Bigelow v. Old Dominion Copper Min., etc., Co.*, 225 U. S., 111; *Hartford L. Ins. Co. v. Ibs*, 237 U. S., 662; *Swift v. McPherson*, 232 U. S., 51; *Bates v. Bodie*, 245 U. S., 520; *Hartford L. Ins. Co. v. Barber*, 245 U. S., 146.

§ 210. Privileges and immunities of citizens.

SECTION 2. ¹The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Decisions of the Supreme Court of the United States:

Bank of United States *v. Devereux*, 5 Cr., 61;
§ 211. Decisions of the court. *Gassius v. Ballou*, 6 Pet., 761; *The State of Rhode Island v. The Commonwealth of Massachusetts*, 12 Pet., 657; *The Bank of Augusta v. Earle*, 13 Pet., 519; *Moore v. The People of The State of Illinois*, 14 How., 13; *Conner et al. v. Elliott et al.*, 18 How., 591; *Dred Scott v. Sandford*, 19 How., 393; *Crandall v. State of Nevada*, 6 Wall., 35; *Woodruff v. Parham*, 8 Wall., 123; *Paul v. Virginia*, 8 Wall., 168; *Downham v. Alexandria Council*, 10 Wall., 173; *Liverpool Insurance Company v. Massachusetts*, 10 Wall., 566; *Ward v. Maryland*, 12 Wall., 418; *Slaughterhouse Cases*, 16 Wall., 36; *Bradwell v. The State*, 16 Wall., 130; *Chemung Bank v. Lowery*, 93 U. S., 72; *McCready v. Virginia*, 94 U. S., 391; *Philadelphia Fire Association v. New York*, 119 U. S., 110; *Pembina Mining Co. v. Pennsylvania*, 125 U. S., 181; *Kimmish v. Ball*, 129 U. S. 217; *Cole v. Cunningham*, 133 U. S., 107; *Manchester v. Massachusetts*, 139 U. S., 240; *Pittsburg & Southern Coal Co. v. Bates*, 156 U. S., 577; *Vance v. W. A. Vandercook*, No. 1, 170 U. S., 438; *Blake v. McClung*, 172 U. S., 239; *Williams v. Fears*, 179 U. S., 270; *Travellers Insurance Co. v. Connecticut*, 185 U. S., 364; *Chadwick v. Kelley*, 187 U. S., 540; *Diamond Glue Co. v. U. S. Glue Co.*, 187 U. S., 611; *Blackstone v. Miller*, 188 U. S., 189; *Anglo American Provision Co. v. Davis Provision Co.*, 191 U. S., 373; *Chambers v. Baltimore and Ohio Railroad Co.*, 207 U. S., 142; *Hudson Water Co. v. McCarter*, 209 U. S., 349; *Armour & Co. v. Virginia*, 246 U. S., 1.

² A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be de-

§ 212. Extradition for treason, felony, or other crime.

livered up, to be removed to the State having Jurisdiction of the Crime.

Decisions of the Supreme Court of the United States:

§ 213. Decisions of the court. *Holmes v. Jennison et al.*, 14 Pet., 540; *Commonwealth of Kentucky v. Dennison*, governor, 24 How., 66; *Taylor v. Tainter*, 16 Wall., 366; *Carroll County v. Smith*, 111 U. S., 556; *Ex parte Reggel*, 114 U. S., 642; *Mahon v. Justice*, 127 U. S., 700; *Lascelles v. Georgia*, 148 U. S., 537; *Utter v. Franklin*, 172 U. S., 416; *Munsey v. Clough*, 196 U. S., 364; *Appleyard v. Massachusetts*, 203 U. S., 222; *Pettibone v. Nichols*, 203 U. S., 192; *McNichols v. Pease*, 207 U. S., 100; *Bossing v. Cody*, 208 U. S., 386; *Pierce v. Creecy*, 210 U. S., 387; *Marbles v. Creecy*, 215 U. S., 63; *Innes v. Tobin*, 240 U. S., 127; *Drew v. Thas*, 235 U. S., 432; *Strassheim v. Daily*, 221 U. S., 280; *Biddinger v. Commissioner of Police*, 245 U. S., 128.

3 No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Decisions of the Supreme Court of the United States:

§ 215. Decisions of the court. *Prigg v. The Commonwealth of Pennsylvania*, 16 Pet., 539; *Jones v. Van Zandt*, 5 How., 215; *Strader et al. v. Graham*, 10 How., 82; *Moore v. The People of the State of Illinois*, 14 How., 13; *Dred Scott v. Sandford*, 19 How., 393; *Ableman v. Booth and United States v. Booth*, 21 How., 506; *Burton v. N. Y. Cent. R. R.*, 245 U. S., 315.

SECTION 3. 1 New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

§ 216. Admission and formation of new States.

CONSTITUTION OF THE UNITED STATES.

§§ 217-219.

Decisions of the Supreme Court of the United States:

§ 217. Decisions of the court. American Insurance Company et al. v. Canter (356 bales cotton), 1 Pet., 511; Pollard's Lessee v. Hagan, 3 How., 212; Cross et al. v. Harrison, 16 How., 164; Benson v. United States, 146 U. S., 325; Ward v. Race Horse, 163 U. S., 504; Bolln v. Nebraska, 176 U. S., 83; Louisiana v. Mississippi, 202 U. S., 1; Coyle v. Smith, 221 U. S., 559; U. S. v. Sandoval, 231 U. S., 28; McCabe v. Atchison, etc., R. Co., 235 U. S., 151; John v. Paullin, 231 U. S., 583.

² The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular States.

Decisions of the Supreme Court of the United States:

§ 219. Decisions of the court. McCulloch v. State of Maryland, 4 Wh., 316; American Insurance Company v. Canter, 1 Pet., 511; United States v. Gratiot et al., 14 Pet., 526; United States v. Rogers, 4 How., 567; Cross et al. v. Harrison, 16 How., 164; Muckey et al. v. Coxe, 18 How., 100; Dred Scott v. Sandford, 19 How., 393; Gibson v. Chouteau, 13 Wall., 92; Clinton v. Englebert, 13 Wall., 434; Beall v. New Mexico, 16 Wall., 535; National Bank v. Yankton County, 101 U. S., 129; United States v. Waddell, 112 U. S., 76; Van Brocklin v. State of Tennessee, 117 U. S., 151; Clayton v. Utah Territory, 132 U. S., 632; Wisconsin Central Railroad Co. v. Price, 133 U. S., 496; Geofroy v. Riggs, 133 U. S., 258; Mormon Church v. United States, 136 U. S., 1; Jones v. United States, 137 U. S., 202; St. Paul, Minneapolis, etc., Railway Co. v. Phelps, 137 U. S., 528; Talton v. Mayes, 163 U. S., 376; American Publishing Co. v. Fisher, 166 U. S., 464; Camfield v. United States, 167 U. S., 518; Thompson v. Utah, 170 U. S., 343; Green Bay & Mississippi Canal Co. v. Patten Paper Co., 173 U. S., 179; Neely v. Henkel (No. 1), 180 U. S., 109; De Lima v. Bidwell, 182 U. S., 1; Dooley v. United States, 182 U. S., 222; Downes v. Bidwell, 182 U. S., 244; Fourteen Diamond Rings v. United States, 183 U. S., 176; Hawaii v. Mankichi, 190 U. S., 197; Binns v. United States, 194 U. S., 486; Dorr v. United States, 195 U. S., 138; Rassmussen v. United States, 197 U. S., 516; United States v. Heinsgen, 206 U. S., 370; Grafton v. United States, 206 U. S., 333; Ponce v. Roman Catholic Church, 210 U. S., 296; Atchison, Topeka & Santa Fe

Ry. Co. v. Sowers, 213 U. S., 55; *El Paso & Northeastern Ry. Co. v. Gutierrez*, 215 U. S., 87; *Weems v. United States*, 217 U. S., 349; *Light v. U. S.*, 220 U. S., 523; *Oregon, etc., R. Co. v. U. S.*, 243 U. S., 549; *Utah Power, etc., Co. v. U. S.*, 243 U. S., 389; *U. S. v. Midwest Oil Co.*, 236 U. S., 459; *Interstate Commerce Com. v. U. S.*, 224 U. S., 474; *Public Utility Commrs. v. Ynchausti & Co.*, 251 U. S., 401.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

§ 220. Republican form of government and protection from domestic violence guaranteed to the States.

Decisions of the Supreme Court of the United States:

§ 221. Decisions of the court. *Luther v. Borden*, 7 How., 1; *Texas v. White*, 7 Wall., 700; *In re Duncan*, 139 U. S., 449; *Taylor et al. v. Beckham* (No. 1), 178 U. S., 548; *South Carolina v. United States*, 199 U. S., 437; *O'Neill v. Leamer*, 239 U. S., 244; *Houck v. Little River Drainage Dist.*, 239 U. S., 254; *Michigan Cent. R. Co. v. Powers*, 201 U. S., 245; *Pacific States Tel. Co. v. Oregon*, 223 U. S., 118; *Ohio v. Hildebrant*, 241 U. S., 565.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred

§ 222. Amendments to the Constitution.

CONSTITUTION OF THE UNITED STATES.

§§ 223-225.

and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Amendments to the Constitution are proposed in the form of joint resolutions, which have their several readings and are enrolled and signed by the presiding officers of the two Houses (V, 7029, footnote), but are not presented to the President for his approval (V, 7040). They are filed with the Secretary of State by the Committee on Enrolled Bills (V, 7041). The two Houses have requested the President to transmit to the States forthwith certain proposed amendments (V, 7041, 7043). The President may notify Congress by message of the promulgation of the ratification of a constitutional amendment (V, 7044). Question has arisen as to the power of a State to recall its assent to a constitutional amendment (V, 7042).

The vote required on a joint resolution proposing an amendment to the Constitution is two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership (V, 7027, 7028). (Speaker Clark, May 13, 1912, 62d Cong., 2d sess.) The requirement of the two-thirds vote applies to the vote on the final passage and not to amendments (V, 7031, 7032) or prior stages (V, 7029, 7030), but is required where the House votes on agreeing to Senate amendments (V, 7033, 7034). One House having, by a two-thirds vote, passed in amended form a proposed constitutional amendment from the other House, and then having by a majority vote receded from its amendment, the constitutional amendment was held not to be passed (V, 7035). A two-thirds vote is required to agree to a conference report on a joint resolution proposing an amendment to the Constitution (V, 7036).

Ayes and nays not required to pass a resolution amending the Constitution (V, 7038-7039).

ARTICLE VI.

¹All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

§ 225. Validity of debts and engagements.

²This Constitution, and the Laws of the United States which shall be made in Pursu-
 § 226. Constitution, laws, and treaties the supreme law of the land.
 ...ance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Recent decisions of the Supreme Court of the United States:

§ 227. Decisions of the court.

Dodge v. Woolsey, 18 How., 331; State of New York v. Dibble, 21 How., 366; Ableman v. Booth and United States v. Booth, 21 How., 506; Sinnot v. Davenport, 22 How., 227; Foster v. Davenport, 22 How., 244; Haver v. Yaker, 9 Wall., 32; Clafflin v. Houseman, assignee, 93 U. S., 130; United States v. 43 Gallons of Whisky, 93 U. S., 188; Hanenstein v. Lynham, 100 U. S., 483; Neal v. Delaware, 103 U. S., 370; Ex parte Crow Dog, 109 U. S., 556; Carroll County v. Smith, 111 U. S., 556; Head Money Cases, 112 U. S., 580; Van Brocklin v. State of Tennessee, 117 U. S., 151; United States v. Rauscher, 119 U. S., 407; Kerr v. Illinois, 119 U. S., 436; Whitney v. Robinson, 124 U. S., 190; The Chinese Exclusion Cases, 130 U. S., 581; Geofroy v. Riggs, 133 U. S., 258; In re Neagle, 135 U. S., 1; Horner v. United States, 143 U. S., 570; Fong Yue Ting v. United States, 149 U. S., 698; Gulf, Colorado and Santa Fe Railway Co. v. Hefley, 158 U. S., 98; Ward v. Race Horse, 163 U. S., 504; McClellan v. Chipman, 164 U. S., 347; Smyth v. Ames, 169 U. S., 466; Missouri, Kansas & Texas Railway Co. v. Haber, 169 U. S., 613; Ohio v. Thomas, 173 U. S., 276; Lone Wolf v. Hitchcock, 187 U. S., 553; South Carolina v. United States, 199 U. S., 437; Paddell v. City of New York, 211 U. S., 446; Berea College v. Kentucky, 211 U. S., 45; McLean v. Arkansas, 211 U. S., 539; Atchison, Topeka & Santa Fe Ry. Co. v. Sowers, 213 U. S., 55; Sanchez v. United States, 216 U. S., 167; Choctaw, etc., R. Co., v. Harrison, 235 U. S., 292; Farmers, etc., Bank v. Minnesota, 232 U. S., 516; Clement Nat. Bank v. Vermont, 231 U. S., 120.

³The Senators and Representatives before men-
 § 228. Oaths of public officers; and prohibition of religious tests.
 ...tioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by

CONSTITUTION OF THE UNITED STATES.

§§ 229-231.

Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

The statutes prescribe the form of oath as follows (I, 128):

§ 229. Form of oath.

"I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

§ 230. Administration of oath at organization.

The act of 1789 provides that on the organization of the House and previous to entering on any other business the oath shall be administered by any Member—by usage the one of longest continuous service (I, 131)—to the Speaker and by the Speaker to the other Members and Clerk (I, 130). This law, however, has at times been considered in the House as directory merely (I, 118, 242, 243, 245), but at other times has been observed carefully (I, 118, 140).

§ 231. Functions of the Speaker in administering the oath.

The Speaker possesses no arbitrary power in the administration of the oath (I, 134), and when objection is made the question must be decided by the House and not by the Chair (I, 519, 520). An objection prevents the Speaker from administering the oath of his own authority, even though the credentials be regular in form (I, 135-138). The Speaker has frequently declined to administer the oath in cases wherein the House has, by its action, indicated that he should not do so (I, 139, 140). And in case of doubt he has waited the instruction of the House (I, 396). (Speaker Clark, Apr. 7, 1913, p. 65, 63d Cong., 1st sess.) There has been discussion as to the competency of a Speaker pro tempore to administer the oath (I, 170), and in the absence of the Speaker a Member-elect waited until the Speaker should be present (I, 179). The House may authorize the Speaker to administer the oath to a Member away from the House (I, 169), or may, in such a case, authorize another than the Speaker to administer the oath (I, 170).

Members have been sworn at the beginning of a second session before the ascertainment of a quorum (I, 176-178), and where a roll call or other ascertainment has shown the absence of a quorum (I, 178, 181, 182). In one instance, however, the Speaker declined to administer the oath under such circumstances (II, 875).

A proposition to administer the oath to a Member is a matter of high privilege, and the oath has been administered during a call of the roll on a motion to agree to rules at the time of organization (I, 173), before the reading of the Journal (I, 172), before a pending motion to amend the Journal (I, 171). A division being demanded on a resolution for seating several claimants, the oath may be administered to each as soon as his case is decided (I, 623). When the House votes to admit a Member and the motion to reconsider is disposed of, the right to be sworn is complete and not to be deferred even by a motion to adjourn (I, 622).

The right of a Member-elect to take the oath is sometimes challenged. This usually occurs at the time of organization of the House. The challenge proceeds from some Member, but the fact that he has not yet taken the oath himself does not debar him from making the challenge (I, 141).

The Member challenging does so on his responsibility as a Member or on the strength of documents (I, 448) or on both (I, 443, 474). And where an objection was sustained neither by affidavit nor on the responsibility of the Member objecting, the House declined to entertain it (I, 455).

It has been held, although not uniformly, that in cases where the right of a Member-elect to take the oath is challenged, the Speaker may direct the Member to stand aside temporarily (I, 143-146, 474). The Member so challenged is not thereby deprived of any right (I, 155), and when several are challenged and stand aside the question is first taken on the Member-elect first required to stand aside (I, 147, 148). In 1861 it was held that the House might direct contested names to be passed over until the other Members-elect had been sworn in (I, 154). Motions and debate are in order on the questions involved in a challenge, and in a few cases other business has intervened by unanimous consent (I, 149, 150). By unanimous consent the consideration of a challenge is sometimes deferred until after the completion of the organization (I, 474), and by unanimous consent also the House has sometimes proceeded to legislative business pending consideration of the right of a Member to be sworn (I, 151-152).

CONSTITUTION OF THE UNITED STATES.

§§ 236-239.

Although the House has emphasized the impropriety of swearing in a Member without credentials (I, 162-168), yet it has been done in cases wherein the credentials are delayed or lost and there is no doubt of the election (I, 85, 176-178), or where the governor of a State has declined to give credentials to a person whose election was undoubted and uncontested (I, 553). Where the prima facie right is contested the Speaker declines to administer the oath (I, 550), but the House admits on his prima facie showing and without regard to final right a Member-elect from a recognized constituency whose credentials are in due form and whose qualifications are unquestioned (I, 528-534). If the status of the constituency is in doubt, the House usually defers the oath (I, 361, 386, 448, 461). The House also may defer the oath when a question of qualifications arises (I, 474), but it may investigate qualifications after the oath is taken (I, 156-159, 420, 462, 481), and after investigation unseat the Member by majority vote (I, 428).

Questions of sanity (I, 441) and loyalty (I, 448) seem to pertain to the competency to take the oath rather than to the question of qualifications, although there has been not a little debate on this subject (I, 479).

Decisions of the Supreme Court of the United States:

§ 237. Sanity and loyalty as related to the oath. Ex parte Garland, 4 Wall., 333; Davis v. Beason, 133 U. S., 333; Mormon Church v. United States, 136 U. S., 1.

§ 238. Decisions of the court.

ARTICLE VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

§ 239. Ratification of the Constitution.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In Wit-

CONSTITUTION OF THE UNITED STATES.

ness whereof We have hereunto subscribed our
Names,

GO WASHINGTON—
Presi^{dt}. and Deputy from Virginia.

[Signed also by the deputies of twelve States.]

New Hampshire.

JOHN LANGDON,

NICHOLAS GILMAN.

Massachusetts.

NATHANIEL GORHAM,

RUFUS KING.

Connecticut.

WM. SAML. JOHNSON,

ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WIL: LIVINGSTON,

WM. PATERSON,

DAVID BREARLEY,

JONA. DAYTON.

Pennsylvania.

B. FRANKLIN,

THOMAS MIFFLIN,

ROBT. MORRIS,

GEO: CLYMER,

THO: FITZSIMONS,

JARED INGERSOLL,

JAMES WILSON,

GOUV: MORRIS.

Delaware.

GEO: READ,

GUNNING BEDFORD, Jun'r,

JOHN DICKINSON,

RICHARD BASSETT.

JACO: BROOM,

Maryland.

JAMES M'HENRY,

DAN: OF ST. THOS. JENIFER,

DANL CARROLL

Virginia.

JOHN BLAIR,

JAMES MADISON, Jr,

North Carolina.

WM. BLOUNT,

RICH'D DOBBS SPAIGHT,

HU. WILLIAMSON.

CONSTITUTION OF THE UNITED STATES.

§§ 240, 241.

South Carolina.

J. RUTLEDGE,

CHARLES COTESWORTH PINCKNEY,

CHARLES PINCKNEY,

PIERCE BUTLER.

Georgia.

WILLIAM FEW,

ABR. BALDWIN.

Attest:

WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION. ^a

[ARTICLE I.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

§ 240. Freedom of religion, of speech, and of peaceable assembly.

Decisions of the Supreme Court of the United States:

§ 241. Decisions of the court.

Terret et al. *v.* Taylor et al., 9 Cr., 43; Vidal et al. *v.* Girard et al., 2 How., 127; *Ex parte* Garland, 4 Wall., 333; United States *v.* Cruikshank et al., 92 U. S., 542; Reynolds *v.* United States, 98 U. S., 145; Spies *v.* Illinois, 123 U. S., 131; Davis *v.* Beason, 133 U. S., 333; Eilenbecker *v.* Plymouth County, 134 U. S., 31; Mormon Church *v.* United States, 136 U. S., 1; *In re* Rapier, 143

^a The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

U. S., 110; *Horner v. United States*, 143 U. S., 207; *Bradfield v. Roberts*, 175 U. S., 291; *Turner v. Williams*, 194 U. S., 279; *Jack v. Kansas*, 199 U. S., 372; *Quick Bear v. Leupp*, 210 U. S., 50; *Twining v. New Jersey*, 211 U. S., 78; *Lewis Pub. Co. v. Morgan*, 229 U. S., 288; *Selective Draft Cases*, 245 U. S., 366; (*Espionage Act*) *Schaefer v. U. S.*, 251 U. S., 466.

[ARTICLE II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

§ 242. The right to bear arms.

Decisions of the Supreme Court of the United States:

§ 243. Decisions of the court. *Presser v. Illinois*, 116 U. S., 252; *Spies v. Illinois*, 123 U. S., 131; *Eilenbecker v. Plymouth County*, 134 U. S., 31; *Jack v. Kansas*, 199 U. S., 372; *Twining v. New Jersey*, 211 U. S., 78.

[ARTICLE III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

§ 244. Quartering of soldiers in houses.

Decisions of the Supreme Court of the United States:

§ 245. Decisions of the court. *Spies v. Illinois*, 123 U. S., 131; *Eilenbecker v. Plymouth County*, 134 U. S., 31; *Jack v. Kansas*, 199 U. S., 372; *Twining v. New Jersey*, 211 U. S., 78.

[ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

§ 246. Security from unreasonable searches and seizures.

CONSTITUTION OF THE UNITED STATES.

§§ 247-249.

Decisions of the Supreme Court of the United States:

§ 247. Decisions of the court. *Smith v. State of Maryland*, 18 How., 71; *Murray's Lessee et al. v. Hoboken Land and Improvement Company*, 18 How., 272; *Ex parte Milligan*, 4 Wall., 2; *Boyd v. United States*, 116 U. S., 616; *Spies v. Illinois*, 123 U. S., 131; *Eilenbecker v. Plymouth County*, 134 U. S., 31; *Fong Yue Ting v. United States*, 149 U. S., 698; *Interstate Commerce Commission v. Brimson*, 154 U. S., 447; *In re Chapman*, 166 U. S., 661; *Adams v. New York*, 192 U. S., 585; *Morris v. Hitchcock*, 194 U. S., 384; *Public Clearing House v. Coyne*, 194 U. S., 497; *Interstate Commerce Commission v. Baird*, 194 U. S., 25; *Jack v. Kansas*, 199 U. S., 372; *Hale v. Henkel*, 201 U. S., 43; *Consolidated Rendering Co. v. Vermont*, 207 U. S., 541; *American Tobacco Co. v. Werckmeister*, 207 U. S., 284; *Twining v. New Jersey*, 211 U. S., 78; *Hammond Packing Co. v. Arkansas*, 212 U. S., 322; *Bagley v. General Fire Extinguishing Co.*, 212 U. S., 477; *Smithsonian Institution v. St. John*, 214 U. S., 19; *Rhodus v. Manning*, 217 U. S., 597; *Weeks v. U. S.*, 232 U. S., 392; *Wilson v. U. S.*, 221 U. S., 361; *Wheeler v. U. S.*, 226 U. S., 479; *American Lithographic Co. v. Werckmeister*, 221 U. S., 603; *Flint v. Stone Tracy Co.*, 220 U. S., 107; *Silverthorne Lumber Co. v. U. S.*, 251 U. S., 385.

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger;¹ nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;² nor shall be compelled in any Criminal Case to be a witness against himself;³ nor be deprived of life, liberty, or property, without due process of law;⁴ nor shall private property be taken for public use, without just compensation.⁵

Recent decisions of the Supreme Court of the United States:

§ 249. Decisions of the court. ² *Kepner v. United States*, 195 U. S., 100; *McCray v. United States*, 195 U. S., 27; ¹ *Rasmussen v. United States*, 197 U. S., 516; ⁴ *Ju Toy v. United States*, 198

U. S., 253; ³ *Jack v. Kansas*, 199 U. S., 372; ⁴ *South Carolina v. United States*, 199 U. S., 437; ² *Trono v. United States*, 199 U. S., 521; ⁵ *Chicago, B. & Q. Ry. Co. v. Drainage Commissioners*, 200 U. S., 561; ⁵ *Southern Pacific R. R. Co. v. United States*, 200 U. S., 341; *Howard v. Kentucky*, 200 U. S., 164; ³ *Hale v. Henkel*, 201 U. S., 43; ³ *McAlister v. Henkel*, 201 U. S., 90; ³ *Nelson v. U. S.*, 201 U. S., 92; ³ *Sawyer v. U. S.*, 202 U. S., 150; ¹ *Matter of Moran*, 203 U. S., 96; ⁵ *Union Bridge Co. v. U. S.*, 204 U. S., 364; ⁵ *Martin v. District of Columbia*, 205 U. S., 135; *Barrington v. Missouri*, 205 U. S., 483; ⁴ and ⁵ *United States v. Heinszen*, 206 U. S., 370; ⁴ *Ellis v. U. S.*, 206 U. S., 246; ² *Grafton v. U. S.*, 206 U. S., 333; ⁴ *Hunter v. Pittsburgh*, 207 U. S., 161; ² *Taylor v. U. S.*, 207 U. S., 120; *Shoener v. Pennsylvania*, 207 U. S., 188; ³ and ⁵ *Consolidated Rendering Co. v. Vermont*, 207 U. S., 541; ³ *American Tobacco Co. v. Werckmeister*, 207 U. S., 284; ⁴ *Adair v. U. S.*, 208 U. S., 161; ² *Bassing v. Cady*, 208 U. S., 386; ⁴ *Garfield v. Goldsby*, 211 U. S., 249; ³ and ⁴ *Twining v. New Jersey*, 211 U. S., 78; ⁴ *Goon Shung v. United States*, 212 U. S., 566; ⁴ *New York Central R. R. v. United States*, 212 U. S., 481; ⁴ *United States v. Delaware & Hudson Co.*, 213 U. S., 366; ² *Keerl v. Montana*, 213 U. S., 135; ⁴ *Oceanic Navigation Co. v. Stranahan*, 214 U. S., 320; *District of Columbia v. Brooke*, 214 U. S., 138; ⁴ *Sanchez v. United States*, 216 U. S., 167; ⁴ *Monongahela Bridge Co. v. United States*, 216 U. S., 177; ² *Brantley v. Georgia*, 217 U. S., 284; ² *Rhodus v. Manning*, 217 U. S., 597; ⁴ *United States v. Welch*, 217 U. S., 333; *St. Louis S. W. Ry. Co. v. Garrison*, 237 U. S., 136; *Jones v. Buffalo Creek Coal Co.*, 245 U. S., 328; ⁴ *Stroud v. U. S.*, 251 U. S., 15; ⁴ and ⁵ *Hamilton v. Kentucky Distilleries Co.*, 251 U. S., 146; ⁴ *Jacob Ruppert v. Caffey*, 251 U. S., 264; ⁴ *Public Utility Commrs. v. Ynchausti & Co.*, 251 U. S., 401; *Silverthorne Lumber Co. v. U. S.*, 251 U. S., 385; ⁴ *Lever Act Cases*, 255 U. S., 81.

[ARTICLE VI.]

§ 250. Right to trial by jury and to confront witnesses and secure testimony.	In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and
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to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Recent decisions of the Supreme Court of the United States:

§ 251. Decisions of the court. Withers *v.* Buckley et al., 20 How., 84; *Ex parte* Milligan, 4 Wall., 2; *Twitchell v. The Commonwealth*, 7 Wall., 321; *Miller v. The United States*, 11 Wall., 268; *United States v. Cook*, 17 Wall., 168; *United States v. Cruikshank et al.*, 92 U. S., 542; *Reynolds v. United States*, 98 U. S., 145; *Spies v. Illinois*, 123 U. S., 131; *Brooks v. Missouri*, 124 U. S., 394; *Callan v. Wilson*, 127 U. S., 540; *Eilenbecker v. Plymouth County*, 134 U. S., 31; *Jones v. United States*, 137 U. S., 202; *Cook v. United States*, 138 U. S., 157; *In re Shubuya Jugiro*, 140 U. S., 291; *In re Ross*, 140 U. S., 453; *Fong Yue Ting v. United States*, 149 U. S., 698; *Mattox v. United States*, 156 U. S., 237; *Rosen v. United States*, 161 U. S., 29; *United States v. Zucker*, 161 U. S., 475; *Wong Wing v. United States*, 163 U. S., 228; *Thompson v. Utah*, 170 U. S., 343; *Maxwell v. Dow*, 176 U. S., 581; *Motes v. United States*, 178 U. S., 458; *Fidelity and Deposit Co. v. United States*, 187 U. S., 315; *Hawaii v. Mankichi*, 190 U. S., 197; *Lloyd v. Dollison*, 194 U. S., 445; *West v. Louisiana*, 194 U. S., 258; *Turner v. Williams*, 194 U. S., 279; *Schirk v. United States*, 195 U. S., 65; *Dorr v. United States*, 195 U. S., 138; *Rasmussen v. United States*, 197 U. S., 516; *Beavers v. Haubert*, 198 U. S., 77; *Marvin v. Trout*, 199 U. S., 212; *Jack v. Kansas*, 199 U. S., 372; *Martin v. Texas*, 200 U. S., 316; *Howard v. Kentucky*, 200 U. S., 164; *Sawyer v. United States*, 202 U. S., 150; *Tinsley v. Treat*, 205 U. S., 20; *Ughbanks v. Armstrong*, 208 U. S., 481; *Armour Packing Co. v. United States*, 209 U. S., 56; *Twining v. New Jersey*, 211 U. S., 78; *Goon Shung v. United States*, 212 U. S., 566; ³ *Knoxville v. Knoxville Water Co.*, 212 U. S., 1; *United States v. Stevenson*, 215 U. S., 190; *Haas v. Henkel*, 216 U. S., 462; *U. S. v. Reagan*, 232 U. S., 37; *Brown v. Elliott*, 225 U. S., 392; *Hyde v. U. S.*, 225 U. S., 347; *Seven Cases v. U. S.*, 239 U. S., 510; *Johnson v. U. S.*, 225 U. S., 405; *Wilson v. U. S.*, 221 U. S., 361; *Dowdell v. U. S.*, 221 U. S., 325; *Ruthenberg v. U. S.*, 245 U. S., 480; *Schaefer v. U. S.*, 251 U. S., 466; *Lever Act Cases*, 255 U. S., 81.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Decisions of the Supreme Court of the United States:

§ 252. Jury trial in suits at common law. *United States v. La Vengeance*, 3 Dall., 297; *Bank of Columbia v. Oakley*, 4 Wh., 235; *Parsons v. Bedford et al.*, 3 Pet., 433; *Lessee of Livingston v. Moore et al.*, 7 Pet., 469; *Webster v. Reid*, 11 How., 437; *State of Pennsylvania v. The Wheeling, &c., Bridge Company et al.*, 13 How., 518; *The Justices v. Murray*, 9 Wall., 274; *Edwards v. Elliott et al.*, 21 Wall., 532; *Pearson v. Yewdall*, 95 U. S., 294; *McElrath v. United States*, 102 U. S., 426; *Spies v. Illinois*, 123 U. S., 131; *Arkansas Valley Land & Cattle Co. v. Mann*, 130 U. S., 69; *Eilenbecker v. Plymouth County*, 134 U. S., 31; *Whitehead v. Shattuck*, 138 U. S., 146; *Scott v. Neely*, 140 U. S., 106; *Cates v. Allen*, 149 U. S., 451; *Fong Yue Ting v. United States*, 149 U. S., 698; *Coughran v. Bigelow*, 164 U. S., 301; *Walker v. New Mexico & Southern Pacific Railroad*, 165 U. S., 593; *Chicago, Burlington & Quincy v. Chicago*, 166 U. S., 226; *American Publishing Co. v. Fisher*, 166 U. S., 464; *Rasmussen v. United States*, 197 U. S., 516; *Marvin v. Trout*, 199 U. S., 212; *Jack v. Kansas*, 199 U. S., 372; *Fidelity Mutual Life Ins. Co. v. Clark*, 203 U. S., 64; *Twining v. New Jersey*, 211 U. S., 78; *St. Louis, etc., Land Co. v. Kansas City*, 241 U. S., 419; *Mountain Timber Co. v. Washington*, 243 U. S., 219; *Minnesota, etc., R. Co. v. Bombolis*, 241 U. S., 211; *Luria v. U. S.*, 231 U. S., 9; *Pease v. Rathbun-Jones Engineering Co.*, 243 U. S., 273; *Mecker v. Lehigh Valley R. Co.*, 236 U. S., 439; *Pedersen v. Delaware, etc., R. Co.*, 229 U. S., 146; *Young v. Central R. Co.*, 232 U. S., 602.

[ARTICLE VIII.]

§ 254. Excessive bail or fines and cruel punishments prohibited. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Decisions of the Supreme Court of the United States:

§ 255. Decisions of the court. *Pervear v. Commonwealth*, 5 Wall., 475; *Spies v. Illinois*, 123 U. S., 131; *Manning v. French*, 133 U. S., 186; *Eilenbecker v. Plymouth County*, 134 U. S., 31;

CONSTITUTION OF THE UNITED STATES.

§§ 256-259.

McElvaine *v.* Brush, 142 U. S., 155; O'Neil *v.* Vermont, 144 U. S., 323; McDonald *v.* Massachusetts, 180 U. S., 311; Jack *v.* Kansas, 199 U. S., 372; Ughbanks *v.* Armstrong, 208 U. S., 481; Twining *v.* New Jersey, 211 U. S., 78; Weems *v.* United States, 217 U. S., 349; Collins *v.* Johnston, 237 U. S., 502; Badders *v.* U. S., 240 U. S., 391.

[ARTICLE IX.]

§ 256. Rights reserved to the people.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Decisions of the Supreme Court of the United States:

§ 257. Decisions of the court.

Lessee of Livingston *v.* Moore et al., 7 Pet., 469; Spies *v.* Illinois, 123 U. S., 131; Jack *v.* Kansas, 199 U. S., 372.

[ARTICLE X.]

§ 258. Powers reserved to the States.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Recent decisions of the Supreme Court of the United States:

Clafin *v.* Houseman, assignee, 93 U. S., 130; Inman Steamship Company *v.* Tinker, 94 U. S., 238; United States *v.* Fox, 94 U. S., 315; Tennessee *v.* Davis, 100 U. S., 257; Spies *v.* Illinois, 123 U. S., 131; Pollock *v.* Farmers' Loan & Trust Co. (Income Tax case), 157 U. S., 429; Forsyth *v.* Hammond, 166 U. S., 506; St. Anthony Falls Water Power Co. *v.* St. Paul Water Commissioners, 168 U. S., 349; Missouri, Kansas & Texas Railway Co. *v.* Haber, 169 U. S., 613; Hancock Mutual Life Ins. Co. *v.* Warren, 181 U. S., 73; Kansas *v.* Colorado, 185 U. S., 125; Andrews *v.* Andrews, 188 U. S., 14; Northern Securities Co. *v.* United States, 193 U. S., 197; Turner *v.* Williams, 194 U. S., 279; McCray *v.* United States, 195 U. S., 27; Central of Georgia Ry. Co. *v.* Murphey, 196 U. S., 194; Matter of Heff (Indian), 197 U. S., 488; South Carolina *v.* United States, 199 U. S., 437; Jack *v.* Kansas, 199 U. S., 372; Hodges *v.* United States, 203 U. S., 1; Kansas *v.* Colorado, 206 U. S., 46; Prentis *v.* Atlantic Coast Line, 211 U. S., 210; Keller *v.*

United States, 213 U. S., 138; *Adams Express Co. v. Kentucky*, 214 U. S., 218; *Western Union Telegraph Co. v. Chiles*, 214 U. S., 274; *Holmgren v. United States*, 217 U. S., 509.

ARTICLE XI.^a

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Decisions of the Supreme Court of the United States:

§ 261. Decisions of the court. *State of Georgia v. Brailsford et al.*, 2 Dall., 402; *Chisholm, ex., v. State of Georgia*, 2 Dall., 419; *Hollingsworth et al. v. Virginia*, 3 Dall., 378; *Cohen v. Virginia*, 6 Wh., 264; *Osborn v. United States Bank*, 9 Wh., 738; *United States v. The Planters' Bank*, 9 Wh., 904; *the Governor of Georgia v. Juan Madrazo*, 1 Pet., 110; *Cherokee Nation v. State of Georgia*, 5 Pet., 1; *Briscoe v. The Bank of the Commonwealth of Kentucky*, 11 Pet., 257; *Curran v. State of Arkansas et al.*, 15 How., 304; *Louisiana v. Jumel*, 107 U. S., 711; *New Hampshire v. Louisiana*, 108 U. S., 76; *Clark v. Barnard*, 108 U. S., 436; *Cunningham v. Macon & Brunswick Railroad*, 109 U. S., 446; *Poindexter v. Greenlow*, 114 U. S., 270; *Allen, auditor, et al. v. Baltimore & Ohio R. R. Co.*, 114 U. S., 311; *Hagood v. Southern*, 117 U. S., 52; *Ralston v. Missouri Fund Commissioners*, 120 U. S., 390; *In re Ayers*, 123 U. S., 443; *Lincoln County v. Luning*, 133 U. S., 529; *Christian v. Atlantic & North Carolina R. R. Co.*, 133 U. S., 233; *Hans v. Louisiana*, 134 U. S., 1; *North Carolina v. Temple*, 134 U. S., 22; *New York Guaranty Co. v. Steele*, 134 U. S., 230; *Virginia Coupon Cases*, 135 U. S., 662; *Pennoyer v. McConnaughy*, 140 U. S., 1; *United States v. Texas*, 143 U. S., 621; *In re Tyler*, 149 U. S., 164; *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S., 362; *Scott v. Donald*, 165 U. S., 58.; *Scott v. Donald*, 165 U. S., 107; *Tindal v. Wesley*, 167 U. S., 204; *Smyth v. Ames*, 169 U. S., 466; *Fitts v. McGhee*, 172 U. S., 516; *Louisiana*

^a The eleventh amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress on the 5th of September, 1794; and was declared in a message from the President to Congress dated the 8th of January, 1793, to have been ratified by the legislatures of three-fourths of the States.

§ 262.

v. Texas, 176 U. S., 1; *Smith v. Reeves*, 178 U. S., 436; *Scranton v. Wheeler*, 179 U. S., 141; *Illinois Central Railroad Co. v. Adams*, 180 U. S., 28; *Prout v. Starr*, 188 U. S., 537; *South Dakota v. North Carolina*, 192 U. S., 286; *Chandler v. Dix*, 194 U. S., 590; *Jacobson v. Massachusetts*, 197 U. S., 11; *Graham v. Folsom*, 200 U. S., 248; *Gunther v. Atlantic Coast Line*, 200 U. S., 273; *McNeill v. Southern Railway Co.*, 202 U. S., 543; *Mississippi R. R. Commission v. Illinois Central R. R.*, 203 U. S., 335; *Scully v. Bird*, 209 U. S., 481; *Ex parte Young*, 209 U. S., 123; *Murray v. Wilson Distilling Co.*, 213 U. S., 151; *Ludwig v. Western Union Telegraph Co.*, 216 U. S., 146; *Western Union Telegraph Co. v. Andrews*, 216 U. S., 165; *Hopkins v. Clemson Agricultural College*, 221 U. S., 636; *Lankford v. Platte Iron Works Co.*, 235 U. S., 461; *Farish v. Oklahoma State Banking Board*, 235 U. S., 498; *Tanner v. Little*, 240 U. S., 369; *Harrison v. St. Louis, etc., R. Co.*, 232 U. S., 318; *Greene v. Louisville, etc., R. Co.*, 244 U. S., 499, 522.

ARTICLE XII.^a

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence

§ 262. Meeting of the electors and transmission and count of their votes.

^a The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article, and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;— * * *

The electoral count occurs in the Hall of the House at 1 p. m. on the second Wednesday of February succeeding every meeting of electors (III, 1918). While a law prescribes in detail the procedure at the count, the two Houses by concurrent resolution provide for the meeting to count the vote, for the appointment of tellers, and for the declaration of the state of the vote (III, 1961).

* * * The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President,

§ 263. Elections of President and Vice-President by the House and Senate in certain cases.

shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

The House of Representatives, in 1801 (III, 1983), chose a President under the following constitutional provision, which was superseded in 1803 by the twelfth amendment:

“The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by ballot the Vice-President.”

§ 264. First provision for election in case of failure of electoral college to choose.

In 1825 the House elected a President under the twelfth amendment (III, 1985); and in 1837 the Senate elected a Vice-President (III, 1941).

§ 265. Decision of the court. Decision of the Supreme Court of the United States: In re Green, 134 U. S., 377.

ARTICLE XIII.^a

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 266. Prohibition of slavery and involuntary servitude.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

Decisions of the Supreme Court of the United States:

§ 267. Decisions of the court. Dred Scott v. Sanford, 19 How., 393; White v. Hart, 13 Wall., 646; Osborn v. Nicholson, 13 Wall., 654, Slaughter-house Cases, 16 Wall., 36; Ex parte Virginia, 100 U. S., 339; Civil Rights Case, 109 U. S., 3; Plessy v. Ferguson, 163 U. S., 537; Robertson v. Baldwin, 165 U. S., 275; Clyatt v. United States, 197 U. S., 207; Hodges v. U. S., 203 U. S., 1; Bailey v. Alabama, 211 U. S., 452; U. S. v. Reynolds, 235 U. S., 133; Butler v. Perry, 240 U. S., 328; Selective Draft Law Cases, 245 U. S., 366.

^a The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

ARTICLE XIV.^a

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.¹ No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;² nor shall any State deprive any person of life, liberty, or property,

§ 268. Citizenship;
security and
equal protection
of citizens.

^a The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore *Resolved*, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty-six States, viz: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866 (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it); Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866; and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867 (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it); Illinois ratified it January 15, 1867; West Virginia,

without due process of law;³ nor deny to any person within its jurisdiction the equal protection of the laws.⁴

Recent decisions of the Supreme Court of the United States:

§ 269. Decisions of
the court.

¹ U. S. v. Nice, 241 U. S., 591; ³ Detroit, etc., R. Co. v. Michigan R. Commission, 240 U. S., 564; ³⁻⁴ New York Cent. R. Co. v. White, 243 U. S., 188; ³ Saunders v. Shaw, 244 U. S., 317; ³ De La Rama v. De La Rama, 241 U. S., 154; ³ Holmes v. Conway, 241 U. S., 624; ³ Chaloner v. Sherman, 242 U. S., 455; ³ Chicago L. Ins. Co. v. Cherry, 244 U. S., 25; ³ Penn. F. Ins. Co. v. Gold Issue Min., etc., Co., 243 U. S., 92; ³ Kryger v. Wilson, 242 U. S., 171; ³ Enterprise Irrigation Dist. v. Farmer's Mut. Canal Co., 243 U. S., 157; ³ O'Neil v. Northern Colorado Irrigation Co., 242 U. S., 20; ³⁻⁴ McFarland v. American Sugar Refining Co., 241 U. S., 79; ³ Bunting v. Oregon, 243 U. S., 426; ³ Bowersock v. Smith, 243 U. S., 29; ³ Adams v. Tanner, 244 U. S., 590; ³ Sutton v. New Jersey, 244 U. S., 258; ³⁻⁴ Chicago, etc., R. Co. v. Anderson, 242 U. S., 283; ³ St. Louis, etc., R. Co. v. Arkansas, 240 U. S., 518; ³ Miss. R. Com. v. Mobile, etc., R. Co., 244 U. S., 388; ³ Chesapeake, etc., R. Co. v. Public Service Com., 242 U. S., 603; ³⁻⁴ Lake Shore, etc., R. Co. v. Clough, 242 U. S., 375; ³ Van Dyke v. Geary, 244 U. S., 39; ³ Pac. Live Stock Co. v. Lewis, 241 U. S., 440; ³ Farmers Irrigation District v. Nebraska, 244 U. S., 325; ³⁻⁴ Hutchinson Ice Cream Co. v. Iowa, 242 U. S., 153; ³ Rast v. Van Deman, etc., Co., 240 U. S., 342; ³ Armour v. North Dakota, 240 U. S., 510; ³ Brazee v. Michigan, 241 U. S., 340; ³ Lehon v. Atlanta, 242 U. S., 53; ³ Buchanan v. Worley, 245 U. S., 60; ³⁻⁴ Merrick v. Halsey, 242 U. S., 568; ³ Butler v. Perry, 240 U. S., 328; ³ Pennington v. Ohio Fourth Nat. Bank, 243 U. S., 269; ³ Thomas Cusack Co. v. Chicago, 242 U. S., 526; ³ Rogers v. Hennepin

January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 29, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868; and Alabama July 13, 1868; Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified February 18, 1870. Virginia rejected it January 19, 1867, and ratified October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867, and was not afterwards ratified by either State.

§ 270.

County, 240 U. S., 184; ³ *Kansas City, etc., R. Co. v. Stiles*, 242 U. S., 111; ³ *St. Louis Southwestern R. Co. v. Arkansas*, 240 U. S., 518; ³ *Bullen v. Wisconsin*, 240 U. S., 625; ³ *Gast Realty, etc., Co. v. Schneider Granite Co.*, 240 U. S., 55; ³ *St. Louis Land Co. v. Kansas City*, 241 U. S., 419; ⁴ *Farmers Irrigation Dist. v. O'Shea*, 244 U. S., 325; ⁴ *Crane v. Johnson*, 242 U. S., 339; ⁴ *Kane v. New Jersey*, 242 U. S., 160; ³ *Looney v. Crane Co.*, 245 U. S., 178; *Selective Draft Law Cases*, 245 U. S., 366; ³ *Wear v. Kansas*, 245 U. S., 154; ³ *Penn. R. R. v. Towers*, 245 U. S., 345; ³ *Crane v. Campbell*, 245 U. S., 304; ³ *Seaboard Air Line v. North Carolina*, 245 U. S., 298; ⁴ *Johnson v. Lankford*, 245 U. S., 541; ⁴ *Martin v. Same*, 245 U. S., 547; ⁴ *Fidelity and Columbia Trust Co. v. Louisville*, 245 U. S., 54; ³ *Eiger v. Garrity*, 246 U. S., 97; ² *Armour & Co. v. Virginia*, 246 U. S., 1; ¹ *Chicago, R. I. & Pac. Ry. v. Cole*, 251 U. S., 54; ¹⁻³ *Ft. Smith Lumber Co. v. Arkansas*, 251 U. S., 532; ¹⁻³ *Dunbar v. City of New York*, 251 U. S., 516; ² *Bragg v. Weaver*, 251 U. S., 57; ²⁻³ *Oklahoma Ry. v. Severns Pav. Co.*, 251 U. S., 104; ²⁻³ *St. L., I. Mt. & So. Ry. v. Williams*, 251 U. S., 63; ³ *Hays v. Port of Seattle*, 251 U. S., 233; ³⁻⁴ *Branson v. Bush*, 251 U. S., 182; ³ *Brooks-Scanlon Co. v. Railroad Comm.*, 251 U. S., 396; ³ *Producers Transp. Co. v. Railroad Comm.*, 251 U. S., 228; ³⁻⁴ *Pacific Gas Co. v. Police Court*, 251 U. S., 22; ³ *Sullivan v. Shreveport*, 251 U. S., 169; ³ *Los Angeles v. Los Angeles Gas Corp.*, 251 U. S., 32; ³ *Hardin-Wyandot Co. v. Upper Sandusky*, 251 U. S., 173.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crimes, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

§ 270. Apportionment of representation.

Except during the present decade each ten years there has been a readjustment of representation (I, 301, footnote). At present the membership of the House is 435 as provided by the apportionment of 1911 (I, 302). While Congress by law apportions the number of Representatives to each State, the State legislatures establish the districts (I, 304). The apportionment act provides that the districts in a State shall be equal to the number of its Representatives, no one district electing more than one Representative (I, 303). But the House has always seated Members elected at large in the States, although the law has required election by districts (I, 310, 519). The districts are required to be composed of contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants (I, 303). Questions have arisen from time to time when a vacancy has occurred soon after a change in districts, with the resulting question whether the vacancy should be filled by election in the old or the new district (I, 311, 312, 327). The House has declined to interfere with the act of a State in changing the boundaries of a district after the apportionment has been made (I, 313).

Decision of the Supreme Court of the United States:

McPherson v. Blacker, 146 U. S., 1.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Congress has by law removed generally the disabilities arising from the Civil War (30 Stat. L., p. 432). Soon after the war various questions arose under this section (I, 386, 393, 455, 456).

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be

§ 271. Law governing the establishment of districts.
§ 272. Loyalty as a qualification of Senators and Representatives.
§ 273. Validity of the national debt, etc.

§ 274.

questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.^a

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or

§ 274. Suffrage not to be abridged for race, color, etc.

previous condition of servitude.

^a The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States. The dates of these ratifications (arranged in the order of their reception at the Department of State) were: From North Carolina, March 5, 1869; West Virginia, March 3, 1869; Massachusetts, March 9-12, 1869; Wisconsin, March 9, 1869; Maine, March 12, 1869; Louisiana, March 5, 1869; Michigan, March 8, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; Illinois, March 5, 1869; Indiana, May 13-14, 1869; New York, March 17-April 14, 1869 (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it); New Hampshire, July 7, 1869; Nevada, March 1, 1869; Vermont, October 21, 1869; Virginia, October 8, 1869; Missouri, January 10, 1870; Mississippi, January 15-17, 1870; Ohio, January 27, 1870; Iowa, February 3, 1870; Kansas, January 18-19, 1870; Minnesota, February 19, 1870; Rhode Island, January 18, 1870; Nebraska, February 17, 1870; Texas, February 18, 1870. The State of Georgia also ratified the amendment February 2, 1870.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Decisions of the Supreme Court of the United States:

United States v. Reece et al., 92 U. S., 214; *United States v. Cruikshank et al.*, 92 U. S., 542; *Ex parte Yarbrough*, 110 U. S., 651; *Neal v. Delaware*, 103 U. S., 370; *United States v. Waddell et al.*, 112 U. S., 76; *McPherson v. Blacker*, 146 U. S., 1; *James v. Bowman*, 190 U. S., 127; *Hodges v. United States*, 203 U. S., 1.

ARTICLE XVI.^a

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

§ 275. Taxes on incomes.

Decisions of the Supreme Court of the United States:

Brushaber v. Union Pac. R. Co., 240 U. S., 17; *Pollock v. Farmers', etc., Co.*, 157 U. S., 429, 158 U. S., 601; *Stanton v. Baltic Min. Co.*, 240 U. S., 103; *Tyce Realty Co. v. Anderson*, 240 U. S., 115; *Peck v. Lowe*, 247 U. S., 165; *Southern Pac. Co. v. Lowe*, 247 U. S., 330; *Smietanka v. Bank*, 257 U. S., 602; *De Ganay v. Lederer*, 250 U. S., 376; *Lynch v. Hornby*, 247 U. S., 339; *Eisner v. Macomber*, 252 U. S., 189; *Towne v. Eisner*, 245 U. S., 418; *U. S. v. Phellis*, 257 U. S., 156; *Rockefeller v. U. S.*, 257 U. S., 176; *Miles v. Safe Deposit & Trust Co.*, 259 U. S., 247; *Evans v. Gore*, 253 U. S., 245.

^a The sixteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Sixty-first Congress, and was declared, in a proclamation of the Secretary of State dated February 25, 1913, to have been ratified by the legislatures of the following States: Alabama, Kentucky, South Carolina, Illinois, Mississippi, Oklahoma, Maryland, Georgia, Texas, Ohio, Idaho, Oregon, Washington, California, Montana, Indiana, Nevada, North Carolina, Nebraska, Kansas, Colorado, North Dakota, Michigan, Iowa, Missouri, Maine, Tennessee, Arkansas, Wisconsin, New York, South Dakota, Arizona, Minnesota, Louisiana, Delaware, and Wyoming.

§ 276.

ARTICLE XVII.^a

(See Article I, Section III.)

§ 276. Election
of Senators by
direct vote.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Senator Rebecca L. Felton was appointed during the recess of the Senate on October 3, 1922, to fill a vacancy. Senator Walter F. George was elected to fill the vacancy on November 7, 1922. Mrs. Felton took the oath of office on November 21, 1922, and Senator George took the oath on November 22, 1922.

Decision of the court:

U. S. v. Aczel (1915), 215 Fed., 917.

^a The seventeenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Sixty-second Congress in 1912, and was declared, in a proclamation by the Secretary of State dated May 31, 1913, to have been ratified by the legislatures of the following States: Massachusetts, Arizona, Minnesota, New York, Kansas, Oregon, North Carolina, California, Michigan, Idaho, West Virginia, Nebraska, Iowa, Montana, Texas, Washington, Wyoming, Colorado, Illinois, North Dakota, Nevada, Vermont, Maine, New Hampshire, Oklahoma, Ohio, South Dakota, Indiana, Missouri, New Mexico, New Jersey, Tennessee, Arkansas, Connecticut, Pennsylvania, and Wisconsin.

ARTICLE XVIII.^a

§ 276A. Prohibition
of intoxicating
liquors.

SECTION 1. After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territories subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from

^a The eighteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Sixty-fifth Congress on the 17th of December, 1917, and was declared in a proclamation by the Secretary of State dated January 29, 1919, to have been ratified by the legislatures of thirty-six of the forty-eight States. The dates of these ratifications were: From Mississippi, January 8, 1918; Virginia, January 10, 1918; Kentucky, January 14, 1918; South Carolina, January 23, 1918; North Dakota, January 25, 1918; Maryland, February 13, 1918; Montana, February 19, 1918; Texas, March 4, 1918; Delaware, March 18, 1918; South Dakota, March 20, 1918; Massachusetts, April 2, 1918; Arizona, May 22, 1918; Georgia, July 22, 1918; Louisiana, August 3, 1918; Florida, December 14, 1918; Michigan, January 2, 1919; Oklahoma, January 7, 1919; Ohio, January 7, 1919; Tennessee, January 8, 1919; Idaho, January 8, 1919; Maine, January 8, 1919; West Virginia, January 9, 1919; Washington, January 13, 1919; California, January 13, 1919; Arkansas, January 14, 1919; Illinois, January 14, 1919; Indiana, January 14, 1919; Kansas, January 14, 1919; North Carolina, January 14, 1919; Alabama, January 14, 1919; Iowa, January 15, 1919; Colorado, January 15, 1919; Oregon, January 15, 1919; New Hampshire, January 15, 1919; Utah, January 15, 1919; Nebraska, January 16, 1919. The amendment was subsequently ratified by the following States: Missouri, January 16, 1919; Wyoming, January 16, 1919; Minnesota, January 17, 1919; Wisconsin, January 17, 1919; New Mexico, January 21, 1919; Nevada, January 21, 1919; Vermont, January 29, 1919; New York, January 29, 1919; Pennsylvania, February 25, 1919; and New Jersey, 1922.

§ 276B.

the date of the submission hereof to the States by the Congress.

Decisions of the courts:

National Prohibition Cases, 253 U. S., 350; *Ex parte Dillon*, 262 Fed., 563; *U. S. v. Colby*, 265 Fed., 998; *Ruppert v. Caffey*, 251 U. S., 264; *U. S. v. Standard Brewery*, 251 U. S., 210; *Amos v. U. S.*, 255 U. S., 313; *Street v. Lincoln Safe Dep. Co.*, 254 U. S., 88; *Corneli v. Moore*, 257 U. S., 491; *Hawes v. Georgia*, 258 U. S., 1; *Vigliotti v. Pennsylvania*, 258 U. S., 403; *Grogan v. Walker & Sons*, 259 U. S., 80; *Lipke v. Lederer*, 259 U. S., 557; *Regal Drug Co. v. Wardell*, 260 U. S., 386; *U. S. v. Lanza*, 260 U. S., 377; *Dillon v. Gloss*, 256 U. S., 368; *Williams v. U. S.*, 255 U. S., 336; *Hawke v. Smith*, 253 U. S., 221.

ARTICLE XIX.^a

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

§ 276B. Woman
suffrage.

Congress shall have power to enforce this article by appropriate legislation.

Decisions of the Supreme Court of the United States:

Leser v. Garnett, 258 U. S., 130; *Fairchild v. Hughes*, 258 U. S., 126; *Hawke v. Smith*, 253 U. S., 231.

^aThe nineteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Sixty-sixth Congress on the 5th of June, 1919, and was declared in a proclamation by the Secretary of State dated August 26, 1920, to have been ratified by the legislatures of thirty-six of the forty-eight States. The dates of these ratifications were: Wisconsin, June 11, 1919; Illinois, June 10, 1919; Michigan, June 10, 1919; Ohio, June 16, 1919; Massachusetts, June 25, 1919; Iowa, July 2, 1919; Missouri, July 3, 1919; Nebraska, August 2, 1919; Montana, August 2, 1919; Minnesota, September 8, 1919; New Hampshire, September 10, 1919; Utah, October 2, 1919; California, November 1, 1919; Maine, November 5, 1919; Pennsylvania, June 27, 1919; Kansas, June 16, 1919; Arkansas, July 28, 1919; Texas, June 28, 1919; New York, June 16, 1919; South Dakota, December 4, 1919; North Dakota, December 5, 1919; Colorado, December 15, 1919; Rhode Island, January 6, 1920; Indiana, January 16, 1920; Kentucky, January 19, 1920; Oregon, January 13, 1920; Wyoming, January 27, 1920; Nevada, February 7, 1920; Arizona, February 12, 1920; New Jersey, February 17, 1920; Oklahoma, February 28, 1920; West Virginia, March 13, 1920; New Mexico, February 21, 1920; Idaho, February 11, 1920; Washington, March 22, 1920; Tennessee, August 24, 1920; Connecticut, September 14, 1920; Vermont, February 8, 1921. Alabama, Virginia, and Maryland rejected this amendment.

JEFFERSON'S MANUAL.

JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE.^a

SEC. I.—IMPORTANCE OF ADHERING TO RULES.

Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say, "It was a maxim he had often heard when he was a young man, from old and experienced Members, that nothing tended more to throw power into the hands of administration, and

§ 277. Rules as related to the privileges of minorities.

^a Jefferson's Manual was prepared by Thomas Jefferson for his own guidance as President of the Senate in the years of his Vice-Presidency, from 1797 to 1801. In 1837 the House, by rule which still exists, provided that the provisions of the Manual should "govern the House in all cases to which they are applicable and in which they are not inconsistent with the standing rules and orders of the House." In 1880 the committee which revised the rules of the House declared in their report that the Manual, "compiled as it was for the use of the Senate exclusively and made up almost wholly of collations of English parliamentary practice and decisions, it was never especially valuable as an authority in the House of Representatives, even in its early history, and for many years past has been rarely quoted in the House" (V, 6757). This statement, although sanctioned by high authority, is extreme, for in certain parts of the Manual are to be found the foundations of some of the most important portions of the House's practice.

§ 278. The Manual as a statement of parliamentary law.

The Manual is regarded by English parliamentarians as the best statement of what the law of Parliament was at the time Jefferson wrote it. Jefferson himself says, in the preface of the work:

"I could not doubt the necessity of quoting the sources of my information, among which Mr. Hatsel's most valuable book is preeminent; but as he has only treated some general heads, I have been obliged to recur to other

those who acted with the majority of the House of Commons, than a neglect of, or departure from, the rules of proceeding; that these forms, as instituted by our ancestors, operated as a check and control on the actions of the majority, and that they were, in many instances, a shelter and protection to the minority, against the attempts of power." So far the maxim is certainly true, and is founded in good sense, that as it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power are the forms

authorities in support of a number of common rules of practice, to which his plan did not descend. Sometimes each authority cited supports the whole passage. Sometimes it rests on all taken together. Sometimes the authority goes only to a part of the text, the residue being inferred from known rules and principles. For some of the most familiar forms no written authority is or can be quoted, no writer having supposed it necessary to repeat what all were presumed to know. The statement of these must rest on their notoriety.

"I am aware that authorities can often be produced in opposition to the rules which I lay down as parliamentary. An attention to dates will generally remove their weight. The proceedings of Parliament in ancient times, and for a long while, were crude, multiform, and embarrassing. They have been, however, constantly advancing toward uniformity and accuracy, and have now attained a degree of aptitude to their object beyond which little is to be desired or expected.

"Yet I am far from the presumption of believing that I may not have mistaken the parliamentary practice in some cases, and especially in those minor forms, which, being practiced daily, are supposed known to everybody, and therefore have not been committed to writing. Our resources in this quarter of the globe for obtaining information on that part of the subject are not perfect. But I have begun a sketch, which those who come after me will successively correct and fill up, till a code of rules shall

and rules of proceeding which have been adopted as they were found necessary, from time to time, and are become the law of the House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities. *2 Hats., 171, 172.*

And whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding

§ 280. Necessity of rules of action.

be formed for the use of the Senate, the effects of which may be accuracy in business, economy of time, order, uniformity, and impartiality."

Jefferson also says in his preface, as to the source most desirable at that time from which to draw principles of procedure:

§ 279. Relations of the parliamentary law to the early practice of Congress.

"But to what system of rules is he to recur, as supplementary to those of the Senate? To this there can be but one answer: To the system of regulations adopted for the government of some one of the parliamentary bodies within these States, or of that which has served as a prototype to most of them. This last is the model which we have all studied, while we are little acquainted with the modifications of it in our several States. It is deposited, too, in publications possessed by many, and open to all. Its rules are probably as wisely constructed for governing the debates of a deliberative body, and obtaining its true sense, as any which can become known to us; and the acquiescence of the Senate, hitherto, under the references to them, has given them the sanction of their approbation."

In this edition those portions of the Manual which refer exclusively to Senate procedure or which refer to English practice wholly inapplicable to the House of Representatives have been omitted. Paragraphs from the Constitution of the United States have also been omitted, as the Constitution is printed entire in this volume.

§ 281.

in business not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body. *2 Hats., 149.*

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SEC. III.—PRIVILEGE.

§ 281. Privileges
of members of
Parliament.

The privileges of members of Parliament, from small and obscure beginnings, have been advancing for centuries with a firm and never yielding pace. Claims seem to have been brought forward from time to time, and repeated, till some example of their admission enabled them to build law on that example. We can only, therefore, state the points of progression at which they now are. It is now acknowledged, 1st. That they are at all times exempted from question elsewhere, for anything said in their own House; that during the time of privilege, 2d. Neither a member himself, his, *order H. of C. 1663, July 16*, wife, nor his servants (*familiares sui*), for any matter of their own, may be, *Elsynge, 217; 1 Hats., 21; 1 Grey's Deb., 133*, arrested on mesne process, in any civil suit: 3d. Nor be detained under execution, though levied before time of privilege: 4th. Nor impleaded, cited, or subpœnaed in any court: 5th. Nor summoned as a witness or juror: 6th. Nor may their lands or goods be distrained: 7th. Nor their persons assaulted, or characters traduced. And the period of time covered by privi-

lege, before and after the session, with the practice of short prorogations under the connivance of the Crown, amounts in fact to a perpetual protection against the course of justice. In one instance, indeed, it has been relaxed by the 10 G. 3, c. 50, which permits judiciary proceedings to go on against them. That these privileges must be continually progressive, seems to result from their rejecting all definition of them; the doctrine being, that "their dignity and independence are preserved by keeping their privileges indefinite; and that 'the maxims upon which they proceed, together with the method of proceeding, rest entirely in their own breast, and are not defined and ascertained by any particular stated laws.'" 1 *Blackst.*, 163, 164.

It was probably from this view of the encroaching character of privilege that the framers of our Constitution, in their care to provide that the laws shall bind equally on all, and especially that those who make them shall not exempt themselves from their operation, have only privileged "Senators and Representatives" themselves from the single act of "arrest in all cases except treason, felony, and breach of the peace, during their attendance at the session of their respective Houses, and in going to and returning from the same, and from being questioned in any other place for any speech or debate in either House." *Const. U. S., Art. I, Sec. 6.* Under the general

§ 282. Privilege
of Members of
Congress under the
Constitution.

§ 283.

authority "to make all laws necessary and proper for carrying into execution the powers given them," *Const. U. S., Art. II, Sec. 8*, they may provide by law the details which may be necessary for giving full effect to the enjoyment of this privilege. No such law being as yet made, it seems to stand at present on the following ground: 1. The act of arrest is void, *ab initio*. 2 *Stra.*, 989. 2. The member arrested may be discharged on motion, 1 *Bl.*, 166; 2 *Stra.*, 990; or by habeas corpus under the Federal or State authority, as the case may be; or by a writ of privilege out of the chancery, 2 *Stra.*, 989, in those States which have adopted that part of the laws of England. *Orders of the House of Commons, 1550, February 20*. 3. The arrest being unlawful, is a trespass for which the officer and others concerned are liable to action or indictment in the ordinary courts of justice, as in other cases of unauthorized arrest. 4. The court before which the process is returnable is bound to act as in other cases of unauthorized proceeding, and liable, also, as in other similar cases, to have their proceedings stayed or corrected by the superior courts.

§ 283. Privilege
as to going and
returning.

The time necessary for going to, and returning from, Congress, not being defined, it will, of course, be judged of in every particular case by those who will have to decide the case. While privilege was understood in England to extend, as it does here, only to exemption from arrest, *eundo, morando, et redeundo*, the

House of Commons themselves decided that "a convenient time was to be understood." (1580,) 1 *Hats.*, 99, 100. Nor is the law so strict in point of time as to require the party to set out immediately on his return, but allows him time to settle his private affairs, and to prepare for his journey; and does not even scan his road very nicely, nor forfeit his protection for a little deviation from that which is most direct; some necessity perhaps constraining him to it. 2 *Stra.*, 986, 987.

This privilege from arrest, privileges, of course, against all process the disobedience to which is punishable by an attachment of the person; as a subpœna ad respondendum, or testificandum, or a summons on a jury; and with reason, because a Member has superior duties to perform in another place. When a Representative is withdrawn from his seat by summons, the 40,000 people whom he represents lose their voice in debate and vote, as they do on his voluntary absence; when a Senator is withdrawn by summons, his State loses half its voice in debate and vote, as it does on his voluntary absence. The enormous disparity of evil admits no comparison.

The House has decided that the summons of a court to Members to attend and testify constituted a breach of privilege, and directed them to disregard the mandate (III, 2661); but in another case wherein Members informed the House that they had been summoned before the grand jury of the District of Columbia, the House authorized them to respond

§ 284. Privilege of Members as related to rights of courts to summon witnesses and jurors.

§ 285. Attitude of the House as to demands of the courts.

§§ 286, 287.

(III, 2662). The House, however, has declined to make a general rule permitting Members to waive their privilege, preferring that the Member in each case should apply for permission (III, 2660). Also in maintenance of its privilege the House has refused to permit the Clerk to produce in court, in obedience to a summons, an original paper from the files, but gave the court facilities for making copies (III, 2664, 2666). No officer or employee, except by authority of the House, should produce before any court a paper from the files of the House, nor furnish a copy of any paper except by authority of the House or a statute (III, 2663).

When either House desires the attendance of a Member of the other to give evidence it is the practice to ask the House of which he is a Member that the Member have leave to attend, and the use of a subpoena is of doubtful propriety (III, 1794). But in one case, at least, the Senate did not consider that its privilege forbade the House to summon one of its officers as a witness (III, 1798). But when the Secretary of the Senate was subpoenaed to appear before a committee of the House with certain papers from the files of the Senate, the Senate discussed the question of privilege before empowering him to attend (III, 2665).

So far there will probably be no difference of opinion as to the privileges of the two Houses of Congress; but in the following cases it is otherwise. In December, 1795, the House of Representatives committed two persons of the name of Randall and Whitney for attempting to corrupt the integrity of certain Members, which they considered as a contempt and breach of the privileges of the House; and the facts being proved, Whitney was detained in confinement a fortnight and Randall three weeks, and was reprimanded by the Speaker. In March, 1796, the House of Representatives voted a challenge given to a Member of their House to be a breach of the privileges of the House; but satisfactory apologies and

§ 286. Attitude of one House as to demands of the other for attendance or papers.

§ 287. Power of the House to punish for contempts.

acknowledgments being made, no further proceeding was had. * * *

The cases of Randall and Whitney (II, 1599-1603) were followed in 1818 by the case of John Anderson, a citizen, who for attempted bribery of a Member was arrested, tried, and censured by the House (II, 1606). Anderson appealed to the courts and this procedure finally resulted in a discussion by the Supreme Court of the United States of the right of the House to punish for contempts, and a decision that the House by implication has the power to punish, since "public functionaries must be left at liberty to exercise the powers which the people have intrusted to them," and "the interests and dignity of those who created them require the exertion of the powers indispensable to the attainment of the ends of their creation. Nor is a casual conflict with the rights of particular individuals any reason to be urged against the exercise of such powers" (II, 1607). In 1828 an assault on the President's secretary in the Capitol gave rise to a question of privilege which involved a discussion of the inherent power of the House to punish for contempt (II, 1615). Again in 1832, when the House censured Samuel Houston, a citizen, for assault on a Member for words spoken in debate (II, 1616), there was a discussion by the House of the doctrine of inherent and implied power as opposed to the other doctrine that the House might exercise no authority not expressly conferred on it by the Constitution or the laws of the land (II, 1619). In 1865 the House arrested and censured a citizen for attempted intimidation and assault on a Member (II, 1625); in 1866, a citizen who had assaulted the clerk of a committee of the House in the Capitol was arrested by order of the House, but as there was not time to punish in the few remaining days of the session, the Sergeant-at-Arms was directed to turn the prisoner over to the civil authorities of the District of Columbia (II, 1629); and in 1870 one Woods, who had assaulted a Member on his way to the House, was arrested on warrant of the Speaker, arraigned at the bar, and imprisoned for a term extending beyond the adjournment of the session, although not beyond the term of the existing House (II, 1626-1628).

In 1876 the arrest and imprisonment by the House of Hallet Kilbourn, a contumacious witness, resulted in a decision by the Supreme Court of the United States that the House had no general power to punish for contempt, as in a case wherein it was proposing to coerce a witness in an inquiry not within the constitutional authority of the House. The Court also discussed the doctrine of inherent power to punish, saying in

§ 288. Decision of the court in Anderson's case.

§ 289. Views of the court in Kilbourn's case.

§ 289A.

conclusion, "We are of opinion that the right of the House of Representatives to punish the citizen for a contempt of its authority on a breach of its privileges can derive no support from the precedents and practices of the two Houses of the English Parliament, nor from the adjudged cases in which the English courts have upheld these practices. Nor, taking what has fallen from the English judges, and especially the later cases on which we have just commented, is much aid given to the doctrine, that this power exists as one necessary to enable either House of Congress to exercise successfully their function of legislation. This latter proposition is one that we do not propose to decide in the present case, because we are able to decide it without passing upon the existence or nonexistence of such a power in aid of the legislative function (103 U. S., 189; II, 1611). In 1894, in the case of Chapman, another contumacious witness, the Supreme Court affirmed the undoubted right of either House of Congress to punish for contempt in cases to which its power properly extends under the expressed terms of the Constitution (II, 1614). The nature of the punishment which the House may inflict was discussed by the court in Anderson's case (II, 1607).

The case of *Marshall v. Gordon*, Sergeant at Arms of the House of Representatives of the United States, on appeal from the District Court of the United States for the Southern District of New York, was decided on April 23, 1917 (243 U. S., 521). Chief Justice White delivered the opinion.

§ 289A. Decision of
the court in *Marshall*
v. Gordon.

Appellant while United States attorney for the Southern District of New York conducted a grand jury investigation which led to the indictment of a Member of the House of Representatives. Acting on charges of misfeasance and nonfeasance made by the Member against appellant in part before the indictment and renewed with additions afterward, the House by resolution directed its Judiciary Committee to make inquiry and report concerning appellant's liability to impeachment. Such inquiry being in progress through a subcommittee, appellant addressed to the subcommittee's chairman, and gave to the press, a letter, charging the subcommittee with an endeavor to probe into and frustrate the action of the grand jury, and couched in terms calculated to arouse the indignation of the members of that committee and those of the House generally. There-

after, appellant was arrested in New York by the Sergeant at Arms pursuant to a resolution of the House whereby the letter was characterized as defamatory and insulting and as tending to bring that body into public contempt and ridicule, and whereby appellant in writing and publishing such letter was adjudged to be in contempt of the House in violating its privileges, honor, and dignity. He applied for habeas corpus.

The court held that the proceedings concerning which the alleged contempt was committed were not impeachment proceedings; that, whether they were impeachment proceedings or not, the House was without power by its own action, as distinct from such action as might be taken under criminal laws, to arrest or punish for such acts as were committed by appellant.

No express power to punish for contempt was granted to the House of Representatives save the power to deal with contempts committed by its own Members (Art. I, § 5). The possession by Congress of the commingled legislative and judicial authority to punish for contempts which was exerted by the House of Commons is at variance with the view and tendency existing in this country when the Constitution was adopted, as evidenced by the manner in which the subject was treated in many State constitutions, beginning at or about that time and continuing thereafter. Such commingling of powers would be destructive of the basic constitutional distinction between legislative, executive, and judicial power, and repugnant to limitations which the Constitution fixes expressly; hence there is no warrant whatever for implying such a dual power in aid of other powers expressly granted to Congress. The House has implied power to deal directly with contempt so far as is necessary to preserve and exercise the legislative authority expressly granted. Being, however, a power of self-preservation, a means and not an end, the power does not extend to infliction of punishment, as such; it is a power to prevent acts which in and of themselves inherently prevent or obstruct the discharge of legislative duty and to compel the doing of those things which are essential to the performance of the legislative functions. As pointed out in *Anderson v. Dunn*, 6 Wheat., 204, this implied power in its exercise is limited to imprisonment during the session of the body affected by the contempt.

§ 290.

The authority does not cease when the act complained of has been committed, but includes the right to determine in the use of legitimate and fair discretion how far from the nature and character of the act there is necessity for repression to prevent immediate recurrence, i. e., the continued existence of the interference or obstruction to the exercise of legislative power. In such case, unless there be manifest an absolute disregard of discretion, and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference. The power is the same in quantity and quality whether exerted on behalf of the impeachment powers or of the others to which it is ancillary. The legislative power to provide by criminal laws for the prosecution and punishment of wrongful acts is not here involved.

* * * The editor of the Aurora having, in his paper of February 19, 1800, inserted some paragraphs defamatory of the Senate, and failed in his appearance, he was ordered to be committed. In debating the legality of this order, it was insisted, in support of it, that every man, by the law of nature, and every body of men, possesses the right of self-defense; that all public functionaries are essentially invested with the powers of self-preservation; that they have an inherent right to do all acts necessary to keep themselves in a condition to discharge the trusts confided to them; that whenever authorities are given, the means of carrying them into execution are given by necessary implication; that thus we see the British Parliament exercise the

§ 290. Jefferson's statement of arguments for inherent power to punish for contempt.

right of punishing contempts; all the State Legislatures exercise the same power, and every court does the same; that, if we have it not, we sit at the mercy of every intruder who may enter our doors or gallery, and, by noise and tumult, render proceeding in business impracticable; that if our tranquillity is to be perpetually disturbed by newspaper defamation, it will not be possible to exercise our functions with the requisite coolness and deliberation; and that we must therefore have a power to punish these disturbers of our peace and proceedings. * * *

* * * To this it was answered, that the Parliament and courts of England have cognizance of contempts by the express provisions of their law; that the State Legislatures have equal authority because their powers are plenary; they represent their constituents completely, and possess all their powers, except such as their constitutions have expressly denied them; that the courts of the several States have the same powers by the laws of their States, and those of the Federal Government by the same State laws adopted in each State, by a law of Congress; that none of these bodies, therefore, derive those powers from natural or necessary right, but from express law; that Congress have no such natural or necessary power, nor any powers but such as are given them by the Constitution; that that has given them, directly, exemption from personal arrest, exemption

§ 291. Statement of arguments against the inherent power to punish for contempts.

from question elsewhere for what is said in their House, and power over their own members and proceedings; for these no further law is necessary, the Constitution being the law; that, moreover, by that article of the Constitution which authorizes them "to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in them," they may provide by law for an undisturbed exercise of their functions, e. g., for the punishment of contempts, of affrays or tumult in their presence, &c.; but, till the law be made, it does not exist; and does not exist, from their own neglect; that, in the meantime, however, they are not unprotected, the ordinary magistrates and courts of law being open and competent to punish all unjustifiable disturbances or defamations, and even their own sergeant, who may appoint deputies ad libitum to aid him, *3 Grey, 59, 147, 255*, is equal to small disturbances; that in requiring a previous law, the Constitution had regard to the inviolability of the citizen, as well as of the Member; as, should one House, in the regular form of a bill, aim at too broad privileges, it may be checked by the other, and both by the President; and also as, the law being promulgated, the citizen will know how to avoid offense. But if one branch may assume its own privileges without control, if it may do it on the spur of the occasion, conceal the law in its own breast, and, after the fact committed, make its sentence both the law and the judgment on that fact;

if the offense is to be kept undefined and to be declared only *ex re nata*, and according to the passions of the moment, and there be no limitation either in the manner or measure of the punishment, the condition of the citizen will be perilous indeed. * * *

* * * Which of these doctrines is to prevail, time will decide. Where there is no fixed law, the judgment on any particular case is the law of that single case only, and dies with it. When a new and even a similar case arises, the judgment which is to make and at the same time apply the law, is open to question and consideration, as are all new laws. Perhaps Congress in the mean time, in their care for the safety of the citizen, as well as that for their own protection, may declare by law what is necessary and proper to enable them to carry into execution the powers vested in them, and thereby hang up a rule for the inspection of all, which may direct the conduct of the citizen, and at the same time test the judgments they shall themselves pronounce in their own case.

§ 292. Jefferson's suggestion that a law might define procedure in cases of contempt.

In 1837 the House declined to proceed with a bill "defining the offense of a contempt of this House, and to provide for the punishment thereof" (II, 1598).

Privilege from arrest takes place by force of the election; and before a return be made a Member elected may be named of a committee, and is to every extent a Member except that he cannot vote until he is sworn. *Memor.*, 107, 108. *D'Ewes*, 642,

§ 293. Status of Member-elect as to privilege, oath, committee service, etc.

col. 2; 643, col. 1. Pet. Miscel. Parl., 119. Lex. Parl., c. 23. 2 Hats., 22, 62.

The Constitution of the United States limits the broad Parliamentary privilege to the time of attendance on sessions of Congress, and of going to and returning therefrom. In a case wherein a Member was imprisoned during a recess of Congress, he remained in confinement until the House, on assembling, liberated him (III, 2676).

It is recognized in the practice of the House that a member may be named of a committee before he is sworn, and in some cases Members have not taken the oath until long afterwards (IV, 4483). In one case, wherein a Member did not appear to take the oath, the Speaker with the consent of the House appointed another Member to the committee place (IV, 4484). The status of a Member-elect under the Constitution undoubtedly differs greatly from the status of a Member-elect under the law of Parliament. In various inquiries by committees of the House this question has been examined, with the conclusions that a Member-elect becomes a Member from the very beginning of the term to which he was elected (I, 500), that he is as much an officer of the Government before taking the oath as afterwards (I, 185), and that his status is distinguished from that of a Member who has qualified (I, 183, 184). Members-elect may resign or decline before taking the oath (II, 1230-1233, 1235), and in one case a Member elect was expelled (I, 476; II, 1262). The names of Members who have not been sworn are not entered on the roll from which the yeas and nays are called for entry on the Journal (V, 6048). (Speaker Clark, May 9, 1913, 63d Cong., 1st sess., p. 1457.)

Every man must, at his peril, take notice who are
 § 294. Relations of members of either House returned of
 Members and others to privilege. record. *Lex. Parl., 23; 4 Inst., 24.*

On complaint of a breach of privilege, the party may either be summoned, or sent for in custody of the sergeant. *1 Grey, 88, 95.*

The privilege of a Member is the privilege of the House. If the Member waive it without leave, it is a ground for punishing him, but cannot in effect waive the privilege of the House. *3 Grey, 140, 222.*

Although the privilege of Members of the House of Representatives is limited by the Constitution, these provisions of the Parliamentary law are applicable, and persons who have attempted to bribe Members (II, 1599, 1606), assault them for words spoken in debate (II, 1617, 1625) or interfere with them while on the way to attend the sessions of the House (II, 1626), have been arrested by order of the House by the Sergeant-at-Arms, "wherever to be found." The House has declined to make a general rule to permit Members to waive their privilege in certain cases, preferring to give or refuse permission in each individual case (III, 2660-2662).

For any speech or debate in either House, they shall not be questioned in any other place.

§ 295. Parliamentary law as to questioning a Member in another place for speech or debate.

Const. U. S., I, 6; S. P. protest of the Commons to James I, 1621; 2 Rapin, No. 54 pp., 211, 212. But this is restrained to things done in the House in a parliamentary course. *1 Rush, 663.* For he

is not to have privilege contra morem parliamentarium, to exceed the bounds and limits of his place and duty. *Com. p.*

If an offense be committed by a member in the House, of which the House has cognizance, it is an infringement of their right for any person or court to take notice of it till the House has punished the offender or referred him to a due course. *Lex. Parl., 63.*

§ 296. Relation of the courts to parliamentary privilege.

Privilege is in the power of the House, and is a restraint to the proceeding of inferior courts, but not of the House itself. *2 Nalson, 450; 2 Grey, 399.* For whatever is spoken in the House is subject to the censure of the House; and offenses of this kind have been severely punished by calling the person to the bar

§§ 297, 298.

to make submission, committing him to the tower, expelling the House, &c. *Scob.*, 72; *L. Parl.*, c. 22.

§ 297. Breach of privilege to refuse to put a question which is in order.

It is a breach of order for the Speaker to refuse to put a question which is in order. 1 *Hats.*, 175-6; 5 *Grey*, 133.

Where the Clerk, presiding during organization of the House, declined to put a question, a Member put the question from the floor (I, 67).

And even in cases of treason, felony, and breach of the peace, to which privilege does not extend as to substance, yet in Parliament a member is privileged as to the mode of proceeding. The case is first to be laid before the House, that it may judge of the fact and of the grounds of the accusation, and how far forth the manner of the trial may concern their privilege; otherwise it would be in the power of other branches of the government, and even of every private man, under pretenses of treason, &c., to take any man from his service in the House, and so, as many, one after another, as would make the House what he pleaseth. *Dec'l of the Com. on the King's declaring Sir John Hotham a traitor.* 4 *Rushw.*, 586. So, when a member stood indicted for felony, it was adjudged that he ought to remain of the House till conviction; for it may be any man's case, who is guiltless, to be accused and indicted of felony, or the like crime. 23 *El.*, 1580; *D'Ewes*, 283, col. 1; *Lex. Parl.*, 133.

Where Members of the House of Representatives have been arrested by the State authorities the cases have not been laid first before the House; but when the House has learned of the proceedings, it has investigated to

ascertain if the crime charged was actually within the exceptions of the Constitution (III, 2673), and in one case where it found a Member imprisoned for an offense not within the exceptions it released him by the hands of its own officer (III, 2676).

The House has not usually taken action in the infrequent instances wherein Members have been indicted for felony, and in one or two instances Members under indictment or pending appeal on conviction, have been appointed to committees (IV, 4479). A Senator after indictment was omitted from committees at his own request (IV, 4479), and a Member who had been convicted in one case did not appear in the House during the Congress (IV, 4484, footnote). A Senator in one case withdrew from the Senate pending his trial (II, 1278), and on conviction resigned (II, 1282). In this case the Senate, after the conviction, took steps looking to action although an application for rehearing on appeal was pending (II, 1282).

When it is found necessary for the public service to put a Member under arrest, or when, on any public inquiry, matter comes out which may lead to affect the person of a member, it is the practice immediately to acquaint the House, that they may know the reasons for such a proceeding, and take such steps as they think proper. *2 Hats., 259.* Of which see many examples. *Ib., 256, 257, 258.* But the communication is subsequent to the arrest. *1 Blackst., 167.*

It is highly expedient, says Hatsel, for the due preservation of the privileges of the separate branches of the legislature, that neither should encroach on the other, or interfere in any matter depending before them, so as to preclude, or even influence, that freedom of debate which is essential to a free council. They are, therefore, not to take

§ 299. Practice as to Members indicted or convicted.

§ 300. Parliamentary law as to arrest of a Member.

§ 301. A breach of privilege for one House to encroach or interfere as to the other.

§§ 302, 303.

notice of any bills or other matters depending, or of votes that have been given, or of speeches which have been held, by the members of either of the other branches of the legislature, until the same have been communicated to them in the usual parliamentary manner. *2 Hats.*, 252; *4 Inst.*, 15; *Seld. Jud.*, 53.

§ 302. Relations of the Sovereign to the Parliament and its Members.

Thus the King's taking notice of the bill for suppressing soldiers, depending before the House; his proposing a provisional clause for a bill before it was presented to him by the two Houses; his expressing displeasure against some persons for matters moved in Parliament during the debate and preparation of a bill, were breaches of privilege; *2 Nalson*, 743; and in 1783, December 17, it was declared a breach of fundamental privileges, &c., to report any opinion or pretended opinion of the King on any bill or proceeding depending in either House of Parliament, with a view to influence the votes of the members. *2 Hats.*, 251, 6.

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SEC. VI.—QUORUM.

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§ 303. Necessity of a quorum during business, including debate.

In general the chair is not to be taken till a quorum for business is present; unless, after due waiting, such a quorum be despaired of, when the chair may be taken and the House adjourned. And whenever, during business,

it is observed that a quorum is not present, any member may call for the House to be counted, and being found deficient, business is suspended. *2 Hats., 125, 126.*

In the House of Representatives the Speaker takes the Chair at the hour to which the House stood adjourned, the question of quorum not being considered unless raised (IV, 2733). According to the earlier and later practice of the House the presence of a quorum is necessary during debate and other business (IV, 2935-2949).

SEC. VII.—CALL OF THE HOUSE.

On the call of the House, each person rises up as he is called, and answereth; the absentees are then only noted, but no excuse to be made till the House be fully called over.

§ 304. Parliamentary rules for call of the House.

Then the absentees are called a second time, and if still absent, excuses are to be heard. *Ord. House of Commons, 92.*

They rise that their persons may be recognized; the voice, in such a crowd, being an insufficient verification of their presence. But in so small a body as the Senate of the United States, the trouble of rising cannot be necessary.

Orders for calls on different days may subsist at the same time. *2 Hats., 72.*

Rule XV, sections 2 and 4, of the House of Representatives provides for a procedure on call of the House. Members of the House do not rise on answering.

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SEC. IX.—SPEAKER.

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When but one person is proposed, and no objection made, it has not been usual in Parliament to put any question to the House; but without a question the members proposing him conduct him to the chair. But if there be objection, or another proposed, a question is put by the Clerk. *2 Hats., 158.* As are also questions of adjournment. *6 Grey, 406.* Where the House debated and exchanged messages and answers with the King for a week without a Speaker, till they were prorogued. They have done it *de die in diem* for fourteen days. *1 Chand., 331, 335.*

The Speaker of the House of Representatives was first chosen by ballot, but since 1839 has been chosen by viva voce vote on a roll call (I, 187, 211). The Clerk appoints tellers for this election (I, 217), but the House, and not the Clerk, decides by what method it shall elect (I, 210). The motion to proceed to the election of Speaker is privileged (I, 212, 214) and debatable unless the previous question be ordered (I, 213). In 1860 the voting for Speaker proceeded slowly, being interspersed with debate (I, 223), and in one instance the House asked candidates for Speaker to state their views before proceeding to election (I, 218). In 1809 it was held that the Speaker should be elected by a majority of all present (I, 215), and in 1879 that he might be elected by a majority of those present, if a quorum, and that a majority of all the Members was not required (I, 216). In two instances the House chose a Speaker by plurality of votes, but confirmed the choice by majority vote (I, 221). On several occasions the choice of Speaker has been delayed for several weeks by contests (I, 222; V, 5356, 6647, 6649).

In the Senate, a President pro tempore, in the absence of the Vice-President, is proposed and chosen by ballot. His office is understood to be determined on the Vice-President's appearing and taking the chair, or at the meeting of the Senate after the first recess.

In the later practice the President pro tempore has usually been chosen by resolution. In 1876 the Senate determined that the tenure of office of a President pro tempore elected at one session does not expire at the meeting of Congress after the first recess, the Vice-President not having appeared to take the chair; that the death of the Vice-President does not have the effect to vacate the office of President pro tempore; and that the President pro tempore holds office at the pleasure of the Senate (II, 1417).

Where the Speaker has been ill, other Speakers pro tempore have been appointed. Instances of this are 1 *H.*, 4. Sir John Cheyney, and Sir William Sturton, and in 15 *H.*, 6. Sir John Tyrrel, in 1656, January 27; 1658, March 9; 1659, January 13.

Sir Job Charlton ill, Seymour chosen, 1673, February 18.

Seymour being ill, Sir Robert Sawyer chosen, 1678, April 15.

Sawyer being ill, Seymour chosen.

Not merely pro tempore. 1 *Chand.*, 169, 276, 277.

Thorpe in execution, a new Speaker chosen, 31 *H. VI*, 3 *Grey*, 11; and March 14, 1694, Sir John Trevor chosen. There have been no later instances. 2 *Hats.*, 161; 4 *Inst.*, 8; *L. Parl.*, 263.

The House of Representatives, by Rule I, § 7, has provided for appointment and election of Speakers pro tempore.

§§ 308, 309.

A Speaker may be removed at the will of the House, and a Speaker pro tempore appointed. 2 *Grey*, 186; 5 *Grey*, 134.

§ 308. Removal of the Speaker.

The House of Representatives has never removed a Speaker; but it has on several occasions removed or suspended other officers, as Clerk and Doorkeeper (I, 287-290, 292; II, 1417), who are officers classed by the Constitution in the phrase "the House of Representatives shall choose their Speaker and other officers." A resolution for the removal of an officer is presented as a matter of privilege (I, 284-286), and a resolution declaring the office of Speaker vacant presents a question of constitutional privilege. (Mar. 19, 1910, 62d Cong., 2d sess., p. 3437.)

SEC. X.—ADDRESS.

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A joint address of both Houses of Parliament is read by the Speaker of the House of Lords. § 309. Addresses to the President. It may be attended by both Houses in a body, or by a Committee from each House, or by the two Speakers only. An address of the House of Commons only may be presented by the whole House, or by the Speaker, 9 *Grey*, 473; 1 *Chandler*, 298, 301; or by such particular members as are of the privy council. 2 *Hats.*, 278.

In the first years of Congress the President annually delivered an address to the two Houses in joint meeting, and the House of Representatives then prepared an address, which the Speaker, attended by the House, carried to the President. A joint rule of 1789 also provided for the presentation of joint addresses of the two Houses to the President (V, 6630). In 1876 the joint rules of the House were abrogated, that providing for the joint address included (V, 6782-6787), but the practice of addresses to the President ceased in 1801 when President Jefferson abandoned the custom of addressing the two Houses and sent instead "a message in writing." From 1801 to 1913 all messages were sent in writing (V, 6629), but the practice of addressing Congress in person was reestablished in 1913.

SEC. XI.—COMMITTEES.

Standing committees, as of Privileges and Elections, &c., are usually appointed at the first meeting, to continue through the session. The person first named is generally permitted to act as chairman.

§ 310. Appointment of standing committees; and designation and duties of chairmen thereof.

But this is a matter of courtesy; every committee having a right to elect their own chairman, who presides over them, puts questions, and reports their proceedings to the House. *4 Inst.*, 11, 12; *Scob.*, 9; *1 Grey*, 122.

Prior to the Sixty-second Congress, standing as well as select committees and their chairmen were appointed by the Speaker, but under the present form of Rule X, adopted in 1911, committees and their respective chairmen are elected by the House (IV, 4448). Owing to their number and size, committees are not usually elected immediately, but resolutions providing for such elections are presented by the majority and minority parties as soon as they are able to perfect the lists. A committee may order its report to be made by the chairman, or by some other member (IV, 4669), even by a member of the minority party (IV, 4672, 4673); and the chairman sometimes submits a report in which he has not concurred (IV, 4670).

At these committees the members are to speak standing, and not sitting; though there is reason to conjecture it was formerly otherwise. *D'Ewes*, 630, col. 1; *4 Parl. Hist.*, 440; *2 Hats.*, 77.

§ 311. Parliamentary law as to debate in standing and select committees.

Their proceedings are not to be published, as they are of no force till confirmed by the House, *Rushw.*, part 3, vol. 2, 74; *3 Grey*, 401; *Scob.*, 39. * * *

§ 312. Secrecy of committee procedure.

In the House of Representatives it is entirely within rule and usage for a committee to conduct its proceedings in secret (IV, 4558-4564), and the

§§ 313-315.

House itself may not abrogate the secrecy of a committee's proceedings except by suspending the rule (IV, 4565). In one case the House authorized the clerk of a committee to disclose by deposition its proceedings (III, 2604). Where a committee takes testimony it is sometimes very desirable that the proceedings be secret (III, 1694), as in the investigation in the Bank of the United States in 1834, when the committee determined that its proceedings should be confidential, not to be attended by any person not invited or required (III, 1732). It is for the committee to determine, in its discretion, whether the proceedings of the committee shall be open or not. Thus, in the case of Roberts, the committee permitted its meetings to be attended by the public, and allowed its proceedings to be published (I, 475, footnote)

§ 313. Reception of petitions by committees.

* * * Nor can they receive a petition but through the House. 9 Grey, 412.

§ 314. Parliamentary law of procedure when a committee inquiry involves a Member.

When a committee is charged with an inquiry, if a Member prove to be involved, they can not proceed against him, but must make a special report to the House; whereupon the Member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him. 9 Grey, 523.

§ 315. Practice of House when a committee inquiry involves a Member.

While the authority of this principle has not been questioned by the House, there have in special instances been deviations from it. Thus, in 1832, when a Member had been slain in a duel, and the fact was notorious that all the principals and seconds were Members of the House, the committee, charged only with investigating the causes and whether or not there had been a breach of privilege, reported with their findings recommendations for expulsion and censure of the Members found to be implicated. There was criticism of this method of procedure as deviating from the rule of Jefferson's Manual, but the House did not commit the report (II, 1644). In 1857, when a committee charged with inquiring into accusations against Members not named found certain Members implicated, they gave them copies of the testimony and opportunities to explain to the committee, under oath or otherwise, as they individually might prefer (III, 1845), but reported recommendations for expulsion with-

out first seeking the order of the House (II, 1275; III, 1844). In 1859 and 1892 a similar procedure occurred (III, 1831, 2637). But the House, in a case wherein an inquiry had incidentally involved a Member, evidently considered the parliamentary law as applicable, since it admitted as of privilege and agreed to a resolution directing the committee to report the charges (III, 1843). And in cases wherein testimony taken before a joint committee incidentally impeached the official characters of a Member and a Senator, the facts in each case were reported to the House interested (III, 1854).

And where one House, by its committee, has found a Member of the other implicated, the testimony has been transmitted (II, 1276; III, 1850, 1852, 1853). Where such testimony was taken in open session of the committee, it was not thought necessary that it be under seal when sent to the other House (III, 1851).

§ 316. Inquiries
involving
Members of
other House.

So soon as the House sits, and a committee is notified of it, the chairman is in duty bound to rise instantly, and the members to attend the service of the House. 2 Nals.; 319.

§ 317. Duty of
chairman of a
committee when
the House sits.

No committee of the House, except the Committee on Rules, may, without special leave, sit during the sitting of the House (Rule XI, § 62). Leave for a committee to sit during sessions of the House does not release its members from liability to arrest during a call of the House (IV, 3020). A request that a committee have leave to sit during sessions of the House has no privileged status in the order of business, and may be prevented by a single objection (IV, 4547).

It appears that on joint committees of the Lords and Commons each committee acted integrally in the following instances: 7 Grey, 261, 278, 285, 338; 1 Chandler, 357, 462. In the following instances it does not appear whether they did or not: 6 Grey, 129; 7 Grey, 213, 229, 321.

§ 318. Action of
joint committees.

It is the practice in Congress that joint committees shall vote per capita, and not as representatives of the two Houses (IV, 4425), although the membership from the House of Representatives is usually, but not always (IV,

§ 319.

4410), larger than that from the Senate (III, 1946; IV, 4426-4431). But ordinary committees of conference appointed to settle differences between the two Houses are not considered joint committees, and the managers of the two Houses vote separately (V, 6336). A quorum of a joint committee seems to have been considered to be a majority of the whole number rather than a majority of the membership of each House (IV, 4424). The first named of the Senate members acted as chairman in one notable instance (IV, 4424), and in another the joint committee elected its chairman (IV, 4447).

SEC. XII.—COMMITTEE OF THE WHOLE.

§ 319. Parli-
mentary usage as
to Committee of
the Whole.

The speech, messages, and other matters of great concernment are usually referred to a Committee of the Whole House (*6 Grey, 311*), where general principles are digested in the form of resolutions, which are debated and amended till they get into a shape which meets the approbation of a majority. These being reported and confirmed by the House are then referred to one or more select committees, according as the subject divides itself into one or more bills. *Scob., 36, 44.* Propositions for any charge on the people are especially to be first made in a Committee of the Whole. *3 Hats., 127.* The sense of the whole is better taken in committee, because in all committees everyone speaks as often as he pleases. *Scob., 49. * * **

This provision is largely obsolete, the House of Representatives having by its rules and practice provided specifically for procedure in Committee of the Whole, and having also by its rules for the order of business left no privileged status for motions to go into Committee of the Whole on matters not already referred to that committee. The Committee of the Whole no longer originates resolutions or bills, but receives such as have been formulated by standing or select committees and referred to it; and when it reports, the House usually acts at once on the report without reference to select or other committees (IV, 4705). The only survival of the parlia-

mentary usage is the practice of referring annual messages of the President to Committee of the Whole, to be there considered and reported, with recommendations for the reference of the various portions to the proper standing or select committees (V, 6621, 6622).

* * * They generally acquiesce in the chairman named by the Speaker; but, as well as all other committees, have a right to elect one, some member, by consent, putting the question. *Scob.*, 36; 3 *Grey*, 301. * * *

§ 320. Selection of chairman of Committee of the Whole.

The House of Representatives (by Rule XXIII, § 1) gives the authority to appoint the Chairmen of the Committee of the Whole to the Speaker (IV, 4704).

* * * The form of going from the House into committee, is for the Speaker, on motion, to put the question that the House do now resolve itself into a Committee of the Whole to take into consideration such a matter, naming it. If determined in the affirmative, he leaves the chair and takes a seat elsewhere, as any other Member; and the person appointed chairman seats himself at the Clerk's table. *Scob.*, 36. * * *

§ 321. Form of going into Committee of the Whole.

This is the form in the House of Representatives, except that the Chairman of the Committee of the Whole seats himself in the Speaker's chair.

* * * Their quorum is the same as that of the House; and if a defect happens, the chairman, on a motion and question, rises, the Speaker resumes the chair and the chairman can make no other report than to inform the House of the cause of their dissolution. * * *

§ 322. Quorum in Committee of the Whole.

§§ 323, 324.

Until 1890 the quorum of the Committee of the Whole of the House of Representatives was the same as the quorum of the House; but in 1890 the rule (XXIII, § 2) fixed it at one hundred (IV, 2966). The same rule provides specifically the procedure in case of failure of a quorum.

* * * If a message is announced during a committee, the Speaker takes the chair and receives it, because the committee can not. *2 Hats., 125, 126.*

§ 323. Rising of committee for reception of messages.

In the House of Representatives the committee rises informally to receive a message, without question being put (IV, 4786, footnote); but at this rising the House may not have the message read or transact other business except by unanimous consent (IV, 4787-4791).

In a Committee of the Whole, the tellers on a division differing as to numbers, great heats and confusion arose, and danger of a decision by the sword. The Speaker took the chair, the mace was forcibly laid on the table; whereupon the Members retiring to their places, the Speaker told the House "he had taken the chair without an order to bring the House into order." Some excepted against it; but it was generally approved as the only expedient to suppress the disorder. And every Member was required, standing up in his place, to engage that he would proceed no further in consequence of what had happened in the grand committee, which was done. *3 Grey, 128.*

§ 324. Quarrels in Committee of the Whole, and duty of the Speaker in relation thereto.

In the House of Representatives the Speaker has on several occasions taken the chair "without an order to bring the House into order" (II, 1648-1653), but that being accomplished he may yield to the chairman that the committee may rise in due form (II, 1349). In one instance, a Member having defied and insulted the chairman, he left the chair, and, on the chair being taken by the Speaker, reported the facts to the House (II, 1653). In several cases Members who have quarrelled have made explanation and

reconciled their difficulties (II, 1651), or have been compelled by the House to apologize "for violating its privileges and offending its dignity" (II, 1648, 1650).

In the House of Representatives one-fifth of a quorum orders tellers.

A Committee of the Whole being broken up in disorder, and the chair resumed by the Speaker without an order, the House was adjourned. The next day the committee was considered as thereby dissolved, and the subject again before the House; and it was decided in the House, without returning into committee. *3 Grey, 130.*

This provision is obsolete, since in the practice of the House of Representatives there are but two committees of the whole, which are in their nature standing committees, with calendars of business. They are never dissolved, and bills remain on their calendars until reported in the regular manner after consideration (IV, 4705). When the Speaker restores order he usually yields the chair to the chairman, thus permitting the committee later to rise in due form (II, 1349).

No previous question can be put in a committee; nor can this committee adjourn as others may; but if their business is unfinished, they rise, on a question, the House is resumed, and the chairman reports that the Committee of the Whole have, according to order, had under their consideration such a matter, and have made progress therein; but not having had time to go through the same, have directed him to ask leave to sit again. Whereupon a question is put on their having leave, and on the time the House will again resolve itself into a com-

§ 325. Effect of breaking up of Committee of the Whole by disorder.

§ 326. Motions for previous question and to adjourn not used in Committee of the Whole.

§§ 327, 328.

mittee. *Scob.*, 38. But if they have gone through the matter referred to them, a member moves that the committee may rise, and the chairman report their proceedings to the House; which being resolved, the chairman rises, the Speaker resumes the chair, the chairman informs him that the committee have gone through the business referred to them, and that he is ready to make report when the House shall think proper to receive it. If the House have time to receive it, there is usually a cry of "now, now," whereupon he makes the report; but if it be late, the cry is "to-morrow, to-morrow," or "Monday," etc., or a motion is made to that effect, and a question put that it be received to-morrow, &c. *Scob.*, 38.

In the practice of the House the previous question and motion to adjourn are not admitted in Committee of the Whole; but the rules (XXIII, §§ 5, 6) provide for closing both the general and five-minute debate. When the committee rises without concluding a matter the chairman reports that they "have come to no resolution thereon;" but leave to sit again is not asked in the modern practice. Nor is permission of the House asked when the chairman reports a matter concluded in committee. The report is made and received as a matter of course, and is thereupon before the House for action.

The Speaker recognizes only reports from the Committee of the Whole made by the chairman thereof (V, 6987), and a matter alleged to have arisen therein but not reported may not be brought to the attention of the House, even on the claim that a question of privilege is involved (IV, 4912). In one instance, however, the committee reported with a bill a resolution relating to an alleged breach of privilege (V, 6986). When a bill is reported the Speaker must assume that it has passed through all the stages necessary for the report (IV, 4916). When the committee reported not only what it had done but by whom it had been prevented from doing other things, the Speaker held that the House

§ 328. Duties of Speaker and House as to reception of reports of Committee of the Whole.

might not amend the report, which stood (IV, 4909). But a committee may not report a recommendation which, if carried into effect, would change a rule of the House (IV, 4907, 4908). When an amendment is reported by the committee it may not be withdrawn, and a question as to its validity is not considered by the Speaker (IV, 4900). When a committee, directed by order of the House to consider certain bills, reported also certain other bills, the Speaker held that so much of the report as related to the latter bills could be received only by unanimous consent (IV, 4911). When a report is ruled out as in excess of the committee's power, the accompanying bill stands recommended (IV, 4784, 4907). A report from a Committee of the Whole may not be received in the absence of a quorum. (Speaker Gillett, Dec. 13, 1924, p. 624.)

The Committee of the Whole, like any other committee, may amend a proposition either by an ordinary amendment or by a substitute amendment (IV, 4899), but these amendments must be reported to the House for action.

§ 329. Amendments in Committee of the Whole.

Amendments rejected by the committee are not reported (IV, 4877). Ordinarily all amendments must be disposed of before the committee may report (IV, 4752-4758); but sometimes a special order requires a report at a specified time, in which case pending amendments are reported (IV, 3225-3228) or not (IV, 4910) as the terms of the order may direct. The practice of the House, based originally on a rule (IV, 4904), requires amendments to be reported from the Committee of the Whole in their perfected forms, and this holds good even in the case of an amendment in the nature of a substitute, which may have been amended freely (IV, 4900-4903). If a Committee of the Whole amend a paragraph and subsequently strike out the paragraph as amended, the first amendment fails, and is not reported to the House or voted on (IV, 4898; V, 6169; also June 28, 1922, p. 9638).

All amendments to a bill reported from the Committee of the Whole stand on an equal footing and must be voted on by the House (IV, 4871) in the order in which they are reported, although they may be inconsistent, one with another (IV, 4881, 4882). Two amendments being reported as distinct were considered independently, although apparently one was a proviso attaching to the other (IV, 4905); and an entire and distinct amendment may not be divided, but must be voted on by the House as a whole (IV, 4883-4892). It is a frequent practice for the House by unanimous consent, to act at once on all the amendments to a bill reported from the Committee of the Whole, but it is the right of any Member to demand a separate vote on any amendment (IV, 4893, 4894). When a bill is reported with amendments, it is in order to submit additional amendments, but the first question is on the committee amendments (IV, 4872-4876); but the opportunity to debate or make additional amendments

§ 330. Committee of the Whole amendments in the House.

§§ 331-333.

depends on the will of the House as expressed on a motion for the previous question (IV, 4895; V, 5794). The fact that a proposition has been rejected by the Committee of the Whole does not prevent it from being offered as an amendment when the subject comes up in the House (IV, 4878-4880). A substitute amendment may be offered to a bill reported from committee, and then the previous question may be ordered on the substitute, on all other amendments, and on the bill to final passage (V, 5472). An amendment in the nature of a substitute reported from committee is treated like any other amendment (V, 5341).

Where a series of bills are reported from Committee of the Whole, the House considers them in the order in which they are reported (IV, 4869, 4870). A proposition reported for action has precedence over an independent resolution on the same subject offered by a Member from the floor (V, 6986), and where a bill and a resolution relating to an alleged breach of privilege were reported together the question was put first on the bill (V, 6986). A bill read in full and considered in Committee of the Whole (IV, 3409, 3410), or presumed to have been so read (IV, 4916), is not read in full again in the House when reported and acted on. The Chairman of the Committee of the Whole which reports a bill does not become entitled to prior recognition for debate in the House (II, 1453); but on an adverse report an opponent is recognized to make a motion for disposition of the bill (IV, 4897) or for debate. (Speaker Gillett, May 19, 1924, 68th Cong., 1st sess., p. 8943.) The recommendation of the committee being before the House, the motion to carry out the recommendation is usually considered as pending without being offered from the floor (IV, 4896), but when a bill was reported with a recommendation that it lie on the table, a question was raised as to whether or not this motion, which prevents debate, should be considered as pending (IV, 4897).

A motion to discharge the Committee of the Whole from the consideration of a matter committed to it is not privileged as against a demand for the regular order (IV, 4917). When the committee is discharged from consideration of a bill the House, in lieu of the report of the chairman, accepts the minutes of the Clerk as evidence of amendments agreed to (IV, 4922).

§ 332. Discharge of the Committee of the Whole.

§ 333. Application of House rules in Committee of the Whole.

In other things the rules of proceedings are to be the same as in the House. *Scob., 39.*

The House of Representatives provides by rule (XXIII, § 8) that the rules of proceeding in the House shall apply in Committee of the Whole so far as they may be applicable.

SEC. XIII.—EXAMINATION OF WITNESSES.

Common fame is a good ground for the House to

§ 334. Common
fame as ground
for investigation.

proceed by inquiry, and even to accusation. *Resolution House of Commons, 1 Car., 1, 1625; Rush, L. Parl., 115; Grey, 16-22, 92; 8 Grey, 21, 23, 27, 45.*

In the House of Representatives common fame has been held sufficient to justify procedure for inquiry (III, 2701), as in a case wherein it was stated on the authority of "common rumor" that a Member had been menaced (III, 2678). The House also has voted to investigate with a view to impeachment on the basis of common fame, as in the cases of Judges Chase (III, 2342), Humphreys (III, 2385), and Durell (III, 2506).

§ 335. The produc-
tion of witnesses at
an inquiry.

Witnesses are not to be produced but where the House has previously instituted an inquiry, *2 Hats., 102*, nor then are orders for their attendance given blank. *3 Grey, 51.*

In the House of Representatives witnesses are summoned in pursuance and by virtue of the authority conferred on a committee by the House to send for persons and papers (III, 1750). Even in cases wherein the rules (Rule XI, § 62) give to certain committees the authority to investigate without securing special permission, authority must be obtained before the production of testimony may be compelled (IV, 4316). The rules require that subpoenas be signed by the Speaker (Rule I, § 4) and attested and sealed by the Clerk (Rule III, § 3). Sometimes the House authorizes issue of subpoenas during a recess of Congress and empowers the Speaker to sign them (III, 1806), and in one case the two Houses, by concurrent resolution, empowered the Vice-President and Speaker to sign during a recess (III, 1763).

When any person is examined before a committee

§ 336. Examination
of witnesses in the
House and in com-
mittee.

or at the bar of the House, any Member wishing to ask the person a question must address it to the Speaker or chairman, who repeats the question to the person, or says

to him, "You hear the question—answer it." But if the propriety of the question be objected to, the Speaker directs the witness, counsel, and parties to withdraw; for no question can be moved or put or debated while they are there. *2 Hats., 108.* Sometimes the questions are previously settled in writing before the witness enters. *Ib., 106, 107; 8 Grey, 64.* The questions asked must be entered in the journals. *3 Grey, 81.* But the testimony given in answer before the House is never written down; but before a committee, it must be, for the information of the House, who are not present to hear it. *7 Grey, 52, 334.*

The Committee of the Whole of the House of Representatives was charged with an investigation in 1792, but the procedure was wholly exceptional (III, 1804), although a statute still empowers the Chairman of the Committee of the Whole, as well as the Speaker, chairmen of select or standing committees, and Members to administer oaths to witnesses (III, 1769). Most inquiries, in the modern practice, are conducted by select or standing committees, and these in each case determine how they will conduct examinations (III, 1773, 1775). In one case a committee permitted a Member of the House not of the committee to examine a witness (III, 2403). Usually these investigations are reported stenographically, thus making the questions and answers of record for report to the House.

The House, in its earlier years, arraigned and tried at its bar persons, not Members, charged with violation of its privileges, as in the cases of Randall, Whitney (II, 1599–1603), Anderson (II, 1606), and Houston (II, 1616); but in the case of Woods, charged with breach of privilege in 1870 (II, 1626–1628), the respondent was arraigned before the House, but was heard in his defense by counsel and witnesses before a standing committee. At the conclusion of that investigation the respondent was brought to the bar of the House while the House voted his punishment (II, 1628). The House also arraigns at its bar contumacious witnesses before taking steps to punish by its own action or through the courts (III, 1685). In examinations at its bar the House has adopted forms of procedure as to questions (II, 1633, 1768), providing that they be asked through the Speaker (II,

§ 337. Earlier and later practice as to inquiries at the bar of the House.

1602, 1606) or by a committee (II, 1617; III, 1668). And the questions to be asked have been drawn up by a committee, even when put by the Speaker (II, 1633). In the earlier practice the answer of a witness at the bar was not written down (IV, 2874); but in the later practice the answers appear in the Journal (III, 1668). The person at the bar withdraws while the House passes on an incidental question (II, 1633; III, 1768).

If either House have occasion for the presence of a person in custody of the other, they ask the other their leave that he may be brought up to them in custody. 3 Hats., 52.

§ 338. Procuring attendance of a witness in custody of the other House.

A Member, in his place, gives information to the House of what he knows of any matter under hearing at the bar. *Jour. H. of C., Jan. 22, 1744-5.*

§ 339. Members as witnesses.

At an examination at the bar of the House in 1795 both the written information given by Members and their verbal testimony were required to be under oath (II, 1602). In a case not of actual examination at the bar, but wherein the House was deliberating on a proposition to order investigation, it demanded by resolution that certain Members produce papers and information (III, 1726, 1811). Members often give testimony before committees of investigation, and in at least one case the Speaker has thus appeared (III, 1776). But in a case wherein a committee summoned a Member to testify as to a statement made by him in debate he protested that it was an invasion of his constitutional privilege (III, 1777, 1778). (Also see House Report 1372, 67th Cong., 4th sess., and Congressional Record, Jan. 25, 1923, pp. 2415-2423.) In one instance the chairman of an investigating committee administered the oath to himself and testified (III, 1821). The House, in an inquiry preliminary to an impeachment trial, gave leave to its managers to examine Members, and leave to its Members to attend for that purpose (III, 2033).

Either House may request, but not command, the attendance of a Member of the other. They are to make the request by message of the other House, and to express clearly the purpose of attendance, that no

§ 340. Method of obtaining testimony of a Member of the other House.

§ 341.

improper subject of examination may be tendered to him. The House then gives leave to the Member to attend, if he choose it; waiting first to know from the Member himself whether he chooses to attend, till which they do not take the message into consideration. But when the peers are sitting as a court of criminal judicature, they may order attendance, unless where it be a case of impeachment by the Commons. There it is to be a request. *3 Hats., 17; 9 Grey, 306, 406; 10 Grey, 133.*

The House of Representatives and the Senate have observed this rule; but it does not appear that they have always made public ascertainment of the willingness of the Member to attend (III, 1790, 1791). In one case the Senate laid aside pending business in order to comply with the request of the House (III, 1791). In several instances House committees, after their invitations to Senators to appear and testify had been disregarded, have issued subpoenas. In such cases the Senators have either disregarded the subpoenas, refused to obey them, or have appeared under protest (III, 1792, 1793). In one case, after a Senator had neglected to respond either to an invitation or a subpoena the House requested of the Senate his attendance and the Senate disregarded the request (III, 1794). Where Senators have responded to invitations of House committees, their testimony has been taken without obtaining consent of the Senate (III, 1793, 1795, footnote).

Counsel are to be heard only on private, not on public, bills, and on such points of law only as the House shall direct. *10 Grey, 61.*

In 1804 the House admitted the counsel of certain corporations to address the House on pending matters of legislation (V, 7298), and in 1806 voted that a claimant might be heard at the bar (V, 7299); but in 1808, after consideration, the House by a large majority declined to follow again the precedent of 1804 (V, 7300). In early years counsel in election cases were heard at the bar at the discretion of the House (I, 657, 709, 757, 765); but in 1836, after full discussion, the practice was abandoned (I, 660), and, with one exception, in 1841 (I, 659), has not been revived, even for the case of a contestant

who could not speak the English language (I, 661). Counsel appear before committees in election cases, however. Where witnesses and others have been arraigned at the bar of the House for contempt, the House has usually permitted counsel (II, 1601, 1616, 1667), sometimes under conditions (III, 1604, 1696); but in a few cases has declined the request (II, 1608; III, 1666, footnote). In inquiries before committees counsel are usually permitted to appear at the discretion of the committee; but at one time the House required all counsel or agents representing persons or corporations before committees to be registered with the Clerk (III, 1771).

In investigations before committees counsel are admitted usually (III, 1741, 1846, 1847), sometimes even to assist a witness (III, 1772). In examinations preliminary to impeachment counsel are usually admitted (III, 1736, 2470, 2516) unless in cases wherein such proceedings are *ex parte*.

SEC. XIV.—ARRANGEMENT OF BUSINESS.

The Speaker is not precisely bound to any rules as to what bills or other matter shall be first taken up; but it is left to his own discretion, unless the House on a question decide to take up a particular subject. *Hakew., 136.*

§ 342. Advantages
of an order of
business.

A settled order of business is, however, necessary for the government of the presiding person, and to restrain individual Members from calling up favorite measures, or matters under their special patronage, out of their just turn. It is useful also for directing the discretion of the House, when they are moved to take up a particular matter, to the prejudice of others, having priority of right to their attention in the general order of business.

* * * * *

In this way we do not waste our time in debating what shall be taken up. We do one thing at a time;

follow up a subject while it is fresh, and till it is done with; clear the House of business gradatim as it is brought on, and prevent, to a certain degree, its immense accumulation toward the close of the session.

Jefferson gave as a part of his comment on the law of Parliament the order of business in the Senate in his time. Both in the House and Senate the order of business has been changed to meet the needs of the times. The order of business now followed in the House is established by Rule XXIV; and this rule, with the rules supplemental thereto, take away to a very large extent the discretion exercised by the Speaker under the parliamentary law.

In the House of Representatives before committees are appointed it is in order to offer a bill or resolution for consideration not previously considered by a committee. (61st Cong., 1st sess., pp. 1341, 3773, 4440.) After committees are appointed bills and resolutions not otherwise in order must be referred. (62d Cong., 1st sess., p. 112.)

Arrangement, however, can only take hold of mat-
 § 343. Conditions ters in possession of the House. New
 of the old and the matter may be moved at any time
 modern orders of when no question is before the House.
 business. Such are original motions and reports on bills. Such
 are bills from the other House, which are received at
 all times, and receive their first reading as soon as the
 question then before the House is disposed of; and
 bills brought in on leave, which are read first when-
 ever presented. So messages from the other House
 respecting amendments to bills are taken up as soon
 as the House is clear of a question, unless they re-
 quire to be printed, for better consideration. Orders
 of the day may be called for, even when another
 question is before the House.

In Jefferson's time the principles of this comment would have applied to both House and Senate; but in the House the pressure of business has become so great that the order of business may be interrupted at the will of the majority only by certain specified matters (see annotations following Rule XXIV). For matters not thus specified, interruption of the order takes place only by unanimous consent.

SEC. XV.—ORDER.

* * * *

In Parliament, "instances make order," per Speaker Onslow. *2 Hats., 141.* But what is done only by one Parliament, cannot be called custom of Parliament, by Prynne. *1 Grey, 52.*

§ 344. Precedent in Parliament and the House.

In the House of Representatives the Clerk is required to note all questions of order and the decisions thereon and print the record thereof as an appendix to the Journal (Rule III, § 3); and the Speaker feels constrained in his rulings to give precedent its proper influence (II, 1317), since the advantages of such a course are undeniable (IV, 4045). But decisions of the Speakers on questions of order are not like judgments of courts which conclude the rights of parties, but may be reexamined and reversed (IV, 4637). It is rare, however, that such a reversal occurs.

SEC. XVI.—ORDER RESPECTING PAPERS.

The Clerk is to let no journals, records, accounts, or papers be taken from the table or out of his custody. *2 Hats., 193, 194.*

§ 345. Safe keeping of papers and integrity of bills.

Mr. Prynne, having at a Committee of the Whole amended a mistake in a bill without order or knowledge of the committee, was reprimanded. *1 Chand., 77.*

A bill being missing, the House resolved that a protestation should be made and subscribed by the members "before Almighty God, and this honorable

§§ 346, 347.

House, that neither myself, nor any other to my knowledge, have taken away, or do at this present conceal a bill entitled," &c. *5 Grey, 202.*

After a bill is engrossed, it is put into the Speaker's hands, and he is not to let any one have it to look into. *Town, col. 209.*

In the House of Representatives an alleged improper alteration of a bill was presented as a question of privilege and examined by a select committee. It being ascertained that the alteration was made to correct a clerical error, the committee reported that it was "highly censurable in any Member or officer of the House to make any change, even the most unimportant, in any bill or resolution which has received the sanction of this body" (III, 2598). Engrossed bills do not go into the Speaker's hands. Enrolled bills go to him for signature.

SEC. XVII.—ORDER IN DEBATE.

§ 346. Decorum of Members as to sitting in their places.

When the Speaker is seated in his chair, every member is to sit in his place. *Scob., 6; Grey, 403.*

In the House of Representatives the decorum of Members is regulated by the various sections of Rule XIV; and this provision of the parliamentary law is practically obsolete.

When any Member means to speak, he is to stand up in his place, uncovered, and to address himself, not to the House, or any particular Member, but to the Speaker, who calls him by his name, that the House may take notice who it is that speaks. *Scob., 6; D'Ewes, 487, col. 1; 2 Hats., 77; 4 Grey, 66; 8 Grey, 108.* But Members who are indisposed may be indulged to speak sitting. *2 Hats., 75, 77; 1 Grey, 143.*

§ 347. Procedure of the Member in seeking recognition.

In the House of Representatives the Member, in seeking recognition, is governed by Rule XIV, § 1, which differs materially from this provision

of the parliamentary law. The Speaker, moreover, calls the Member, not by name, but as "the gentleman from ——," naming the State. As long ago as 1832, at least, a Member was not required to rise from his own seat (V, 4979, footnote).

§ 348. Conditions under which a Member's right to the floor is subjected to the will of the House.

When a Member stands up to speak, no question is to be put, but he is to be heard unless the House overrule him. *4 Grey, 390; 5 Grey, 6, 143.*

In the House of Representatives no question is put as to the right of a Member to the floor, unless he be called to order and dealt with by the House under Rule XIV, §§ 4, 5.

If two or more rise to speak nearly together, the Speaker determines who was first up, and calls him by name, whereupon he proceeds, unless he voluntarily sits down and gives way to the other. But sometimes the House does not acquiesce in the Speaker's decision, in which case the question is put, "which Member was first up?" *2 Hats., 76; Scob., 7; D'Ewes, 434, col. 1, 2.*

In the Senate of the United States the President's decision is without appeal.

In the House of Representatives recognitions by the Chair are governed by Rule XIV, § 2, and the practice thereunder. There has been no appeal from the Speaker's decision since 1881 (II, 1425-1428).

No man may speak more than once on the same bill on the same day; or even on another day, if the debate be adjourned. But if it be read more than once in the same day, he may speak once at every reading. *Co., 12, 115; Hakew., 148; Scob., 58; 2*

§ 350. Right of the Member to be heard a second time.

Hats., 75. Even a change of opinion does not give a right to be heard a second time. *Smyth's Comw. L.*, 2, c. 3; *Arcan. Parl.*, 17.

But he may be permitted to speak again to clear a matter of fact, 3 *Grey*, 357, 416; or merely to explain himself, 2 *Hats.*, 73, in some material part of his speech, *Ib.*, 75; or to the manner or words of the question, keeping himself to that only, and not traveling into the merits of it, *Memorials in Hakew.*, 29; or to the orders of the House, if they be transgressed, keeping within that line, and not falling into the matter itself. *Mem. Hakew.*, 30, 31.

The House of Representatives has modified the parliamentary law as to a Member's right to speak a second time by Rule XIV, §§ 3, 6. But in practice the rule is not, ordinarily, enforced rigidly and Members find little difficulty in making explanations such as are contemplated by the parliamentary law.

But if the Speaker rise to speak, the Member standing up ought to sit down, that he may be first heard. *Town.*, col. 205; *Hale Parl.*, 133; *Mem. in Hakew.*, 30, 31. Nevertheless, though the Speaker may of right speak to matters of order, and be first heard, he is restrained from speaking on any other subject, except where the House have occasion for facts within his knowledge; then he may, with their leave, state the matter of fact. 3 *Grey*, 38.

This provision is usually observed in the practice of the House, so far as the conduct of the Speaker in the chair is concerned. In several instances the Speaker has been permitted by the House to make a statement from the chair, as in a case wherein his past conduct had been criticised (II,

§ 351. Partlepa-
tion of the Speaker
in debate.

1369), and in a case wherein there had been unusual occurrences in the joint meeting to count the electoral vote (II, 1372), and in a matter relating to a contest for the seat of the Speaker as a Member (II, 1360). In rare instances the Speaker has made brief explanations from the chair without asking the assent of the House (II, 1373, 1374). Speakers have called others to the chair and participated in debate, usually without asking consent of the House (II, 1360, 1367, footnote, 1368, 1371, 1950), and in one case a Speaker on the floor debated a point of order which the Speaker pro tempore was to decide (V, 6097). In rare instances Speakers have left the chair to make motions on the floor (II, 1367, footnote). According to a former custom, now fallen into disuse, Speakers participated freely in debate in Committee of the Whole (II, 1367, footnote).

No one is to speak impertinently or beside the question, superfluous, or tediously. § 352. Impertinent, superfluous, or tedious speaking. *Scob.*, 31, 33; *2 Hats.*, 166, 168; *Hale Part.*, 133.

The House, by Rule XIV, § 1, provides that the Member shall address himself to the question under debate, but neither by rule nor practice has the House ever suppressed superfluous or tedious speaking, its hour rule (XIV, § 2) being a sufficient safeguard in this respect.

No person is to use indecent language against the proceedings of the House; no prior determination of which is to be reflected on by any Member, unless he means to conclude with a motion to rescind it. § 353. Language reflecting on the House. *2 Hats.*, 169, 170; *Rushw.*, p. 3, v. 1, fol. 42. But while a proposition under consideration is still *in fieri*, though it has even been reported by a committee, reflections on it are no reflections on the House. *9 Grey*, 508.

In the practice of the House of Representatives it has been held out of order in debate to cast reflections on either the House or its membership or its decisions, whether present or past (V, 5132-5138). A Member who had used offensive words against the character of the House, and who declined to explain, was censured (II, 1247). Words impeaching the loyalty

§§ 354, 355.

of a portion of the membership have also been ruled out (V, 5139). Where a Member reiterated on the floor certain published charges against the House, action was taken, although other business had intervened, the question being considered one of privilege (III, 2637). It is not in order in debate to refer to the proceedings of a committee except such as have been formally reported to the House (V, 5080-5083; Speaker Gillett, Apr. 18, 1924, p. 6659), but this rule does not apply to the proceedings of a committee of a previous Congress. (Chairman Hay, Feb. 4, 1914.)

No person, in speaking, is to mention a Member then present by his name, but to describe him by his seat in the House, or who spoke last, or on the other side of the question, &c., *Mem. in Hakew.*, 3; *Smyth's Comw.*, L. 2, c. 3; nor to digress from the matter to fall upon the person, *Scob.*, 31; *Hale Parl.*, 133; 2 *Hats.*, 166, by speaking reviling, nipping, or unmanly words against a particular Member. *Smyth's Comw.*, L. 2, c. 3. * * *

§ 354. Personalities
in debate
forbidden.

In the practice of the House a Member is not permitted to refer to another by name (V, 5144), or to address him in the second person (V, 5140-5143) instead of as "the gentleman from ——," naming the State. By rule of the House (Rule XIV, § 1), as well as by the parliamentary law, personalities are forbidden (V, 4979, 5145, 5163, 5169), whether against the Member in his capacity as Representative or otherwise (V, 5152, 5153). But a distinction has been drawn between charges made by one Member against another in a newspaper and the same made in debate on the floor (III, 2691). Questions have arisen sometimes involving a distinction between general language and personalities (V, 5153, 5163, 5169). A denunciation of the spirit in which a Member had spoken was held out of order as a personality (V, 6981). The House has censured a Member for gross personalities (II, 1251).

Complaint of the conduct of the Speaker should be presented directly for the action of the House and not by way of debate on other matters (V, 5188). In a case wherein a Member used words insulting to the Speaker the House on a subsequent day, and after other business had intervened, censured the offender (II, 1248). In such a case the Speaker would ordinarily leave the chair while action should be taken by the House (II, 1366: V, 5188).

§ 355. Criticism
of the Speaker.

* * * The consequences of a measure may be reprobated in strong terms; but to arraign the motives of those who propose to advocate it is a personality, and against order. *Qui digreditur a materia ad personam*, Mr. Speaker ought to suppress. *Ord. Com., 1604, Apr. 19.*

§ 356. Motives of Members not to be arraigned.

The arraignment of the motives of Members is not permitted (V, 5147-5151), and the Speakers have intervened to prevent it, in the earlier practice preventing even the mildest imputations (V, 5161, 5162). While in debate the assertion of one Member may be declared untrue by another, yet in so doing an intentional misrepresentation must not be implied (V, 5157-5160), and if stated or implied is censurable (II, 1305) and presents a question of privilege (III, 2717). A Member in debate having declared the words of another "a base lie," censure was inflicted by the House on the offender (II, 1249).

No one is to disturb another in his speech by hissing, coughing, spitting, 6 *Grey*, 332; *Scob.*, 8; *D'Ewes*, 332, col. 1, 640, col. 2, speaking or whispering to another, *Scob.* 6; *D'Ewes*, 487, col. 1; not stand up to interrupt him, *Town.*, col. 205; *Mem. in Hakew.*, 31; nor to pass between the Speaker and the speaking Member, nor to go across the House, *Scob.*, 6, or to walk up and down it, or to take books or papers from the table, or write there, 2 *Hats.*, 171.

§ 357. Disorder and interruptions during debate.

The House of Representatives has by Rule XIV, § 7, prescribed certain rules of decorum differing somewhat from this provision of the parliamentary law, but supplemental to it rather than antagonistic. In one respect, however, the practice of the House differs from the apparent intent of the parliamentary law. In the House a Member may interrupt by addressing the Chair for permission of the Member speaking (V, 5006); but it is entirely within the discretion of the Member occupying the floor to determine when and by whom he shall be interrupted (V, 5007, 5008).

§§ 358-360.

Nevertheless, if a Member finds that it is not the inclination of the House to hear him, and that by conversation or any other noise they endeavor to drown his voice, it is his most prudent way to submit to the pleasure of the House, and sit down; for it scarcely ever happens that they are guilty of this piece of ill manners without sufficient reason, or inattention to a Member who says anything worth their hearing. *2 Hats., 77, 78.*

In the House of Representatives, where the previous question and hour rule of debate have been used for many years, the parliamentary method of suppressing a tedious Member has never been imported into the practice (V, 5445).

If repeated calls do not produce order, the Speaker may call by his name any Member obstinately persisting in irregularity; whereupon the House may require the Member to withdraw. He is then to be heard in exculpation, and to withdraw. Then the Speaker states the offense committed; and the House considers the degree of punishment they will inflict. *2 Hats., 167, 7, 8, 172.*

The House of Representatives, in Rule XIV, §§ 4, 5, has made a provision which supercedes this provision of the parliamentary law.

For instances of assaults and affrays in the House of Commons, and the proceedings thereon, see *1 Pct. Misc., 82; 3 Grey, 128; 4 Grey, 328; 5 Grey, 382; 6 Grey, 254; 10 Grey, 8.* Whenever warm words or an

§ 358. Parliamentary method of silencing a tedious Member.

§ 359. The parliamentary law as to naming a disorderly Member.

§ 360. Proceedings in cases of assaults and affrays.

assault have passed between Members, the House, for the protection of their Members, requires them to declare in their places not to prosecute any quarrel, *3 Grey, 128, 293; 5 Grey, 280*; or orders them to attend the Speaker, who is to accommodate their differences, and report to the House, *3 Grey, 419*; and they are put under restraint if they refuse, or until they do. *9 Grey, 234, 312*.

In several instances assaults and affrays have occurred on the floor of the House of Representatives. Sometimes the House has allowed these affairs to pass without notice, the Members concerned making apologies either personally or through other Members (II, 1658-1662). In other cases the House has exacted apologies (II, 1646-1651, 1657), or required the offending Members to pledge themselves before the House to keep the peace (II, 1643). In case of an aggravated assault by one Member on another on the portico of the Capitol for words spoken in debate, the House censured the assailant and three other Members who had been present, armed, to prevent interference (II, 1655, 1656). Assaults or affrays in Committee of the Whole are dealt with by the House (II, 1648-1651).

Disorderly words are not to be noticed till the Member has finished his speech. *5 Grey, 356; 6 Grey, 60*. Then the person objecting to them, and desiring them to be taken down by the Clerk at the table, must repeat them. The Speaker then may direct the Clerk to take them down in his minutes; but if he thinks them not disorderly, he delays the direction. If the call becomes pretty general, he orders the Clerk to take them down, as stated by the objecting Member. They are then a part of his minutes, and when read to the offending Member, he may deny they were his words, and the House must then decide

§ 361. Parliamentary law as to taking down disorderly words.

by a question whether they are his words or not. Then the Member may justify them, or explain the sense in which he used them, or apologize. If the House is satisfied, no further proceeding is necessary. But if two Members still insist to take the sense of the House, the Member must withdraw before that question is stated, and then the sense of the House is to be taken. *2 Hats., 199; 4 Grey, 170; 6 Grey, 59.* When any Member has spoken, or other business intervened, after offensive words spoken, they can not be taken notice of for censure. And this is for the common security of all, and to prevent mistakes which must happen if words are not taken down immediately. Formerly they might be taken down at any time the same day. *2 Hats., 196; Mem. in Hakew., 71; 3 Grey, 48; 9 Grey, 514.*

The House of Representatives has, by Rule XIV, §§ 4, 5, provided a method of procedure in cases of disorderly words. The House permits and requires them to be noticed as soon as uttered, and has not insisted that the offending Member withdraw while the House is deciding as to its course of action.

Disorderly words spoken in a committee must be written down as in the House; but the committee can only report them to the House for animadversion. *6 Grey, 46.*

§ 362. Disorderly words taken down and reported from Committee of the Whole.

This provision of the parliamentary law has been applied to the Committee of the Whole rather than to select or standing committees. The House has censured a Member for disorderly words spoken in Committee of the Whole and reported therefrom (II, 1259).

In Parliament, to speak irreverently or seditiously against the King, is against order.

§ 363. References in debate to the Executive.

Smyth's Comw., L. 2, c. 3; 2 Hats., 170.

This provision of the parliamentary law is manifestly inapplicable to the House of Representatives (V, 5086); and it has been held in order in debate to refer to the President of the United States or his opinions, either with approval or criticism, provided that such reference be relevant to the subject under discussion and otherwise conformable to the rules of the House (V, 5087-5091). Also a reference to the probable action of the President was held in order (V, 5092). In debating a proposition to impeach the President a wide latitude was permitted to a Member in preferring charges (V, 5093), but he was required to abstain from language personally offensive (V, 5094). On January 27, 1909 (60th Cong., 2d sess., p. 1465), the House adopted a report of a committee appointed to investigate the question, which report in part stated:

"The freedom of speech in debate in the House of Representatives should never be denied or abridged, but freedom of speech in debate does not mean license to indulge in personal abuse or ridicule. The right of Members of the two Houses of Congress to criticize the official acts of the President and other executive officers is beyond question, but this right is subject to proper rules requiring decorum in debate. Such right of criticism is inherent upon legislative authority. The right to legislate involves the right to consider conditions as they are and to contrast present conditions with those of the past or those desired in the future. The right to correct abuses by legislation carries the right to consider and discuss abuses which exist or which are feared.

"It is, however, the duty of the House to require its Members in speech or debate to preserve that proper restraint which will permit the House to conduct its business in an orderly manner and without unnecessarily and unduly exciting animosity among its Members or antagonism from those other branches of the Government with which the House is correlated."

It is a breach of order in debate to notice what has been said on the same subject in the other House, or the particular votes or majorities on it there; because the opinion of each House should be left to its own independency, not to be influenced by the proceedings of the other; and the quoting them

§ 364. Debate and proceedings in the other House not to be noticed in debate.

§§ 365, 366.

might beget reflections leading to a misunderstanding between the two Houses. *8 Grey, 22.*

This rule of the parliamentary law is in use in the House of Representatives to the full extent of its provisions, and it has always been held a breach of order to refer to debates or votes on the same subject in the other House (V, 5095-5097), or to the action or probable action of the other House (V, 5101-5105), or to its methods of procedure, as bearing on the course to be taken on a pending matter (V, 5100). In one instance the Senate declined to have read from the Congressional Record the proceedings of the House, even as the basis of a question of order relating to the rights of the Senate (V, 6406). It is, however, permissible to refer to proceedings in the other House generally, provided the reference does not contravene the principles of the rule (V, 5098, 5099, 5107-5111); but a Member may not, in debate, in the House, read the record of speeches and votes of Senators in such connection of comment or criticism as might be expected to lead to recriminations (V, 5107-5111), and it was even held out of order to criticize words spoken in the Senate by one not a Member of that body in the course of an impeachment trial (V, 5106). But a Member of the House was permitted to read, in debate, a speech made in the Senate by one no longer a member of that body (V, 5113), and in another case the personal views of a Senator, not uttered in the Senate, were referred to in the House (V, 5112).

While the Senate may be referred to properly in debate, it is not in order
 § 365. The other to discuss its functions or criticize its acts (V, 5114-5120),
 House and its or refer to a Senator in terms of personal criticism
 Members not to be (V, 5121, 5122), or read a paper making such criticism
 criticized in debate. (V, 5128); and after examination by a committee a
 speech reflecting on the character of the Senate was ordered to be stricken
 from the Record, on the ground that it tended to create "unfriendly conditions between the two bodies * * * obstructive of wise legislation and little short of a public calamity" (V, 5129). But where a Member has been assailed in the Senate, he has been permitted to explain his own conduct and motives, without bringing the whole controversy into discussion or assailing the Senator (V, 5123-5126). Propositions relating to breaches of these principles have been entertained as of privilege (V, 5129, 6980).

Neither House can exercise any authority over a
 § 366. Complaint by Member or officer of the other, but
 one House of conduct of a Member should complain to the House of which
 of the other. he is, and leave the punishment to them.

In a notable instance, wherein a Member of the House had assaulted a Senator in the Senate Chamber for words spoken in debate, the Senate examined the breach of privilege and transmitted its report to the House, which punished the Member (II, 1622). But where certain Members of the House, in a published letter, sought to influence the vote of a Senator in an impeachment trial, the House declined to consider the matter as a breach of privilege (III, 2657).

* * * Where the complaint is of words disrespectfully spoken by a Member of another House, it is difficult to obtain punishment, because of the rules supposed necessary to be observed (as to the immediate noting down of words) for the security of Members. Therefore it is the duty of the House, and more particularly of the Speaker, to interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other House, and introduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder. *3 Hats., 51.*

§ 367. Duty of the Speaker to prevent expressions offensive to the other House.

In the House of Representatives this rule of the parliamentary law is considered as binding on the Chair (V, 5130). (Speaker Clark, June 11, 1917, 65th Cong., 1st sess., p. 3458.)

§§ 368, 369.

No Member may be present when a bill or any business concerning himself is debating; nor is any Member to speak to the merits of it till he withdraws. *2 Hats., 219.*

The rule is that if a charge against a Member arise out of a report of a committee, or examination of witnesses in the House, as the Member knows from that to what points he is to direct his exculpation, he may be heard to those points before any question is moved or stated against him. He is then to be heard, and withdraw before any question is moved. But if the question itself is the charge, as for breach of order or matter arising in the debate, then the charge must be stated (that is, the question must be moved), himself heard, and then to withdraw. *2 Hats., 121, 122.*

In 1832, during proceedings for the censure of a Member, the Speaker informed the Member that he should retire (II, 1366); but this seems to be an exceptional instance of the enforcement of the law of Parliament. In other cases, after the proposition for censure or expulsion has been proposed, Members have been heard in debate, either as a matter of right (II, 1236), as a matter of course (II, 1246, 1253), by express provision (II, 1273), and in writing (II, 1273), or by unanimous consent (II, 1275). But a Member was not permitted to depute another Member to speak in his behalf (II, 1273).

Where the private interests of a Member are concerned in a bill or question he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the House

§ 369. Disqualifying
personal interest of
a Member.

that this rule of immemorial observance should be strictly adhered to. *2 Hats., 119, 121; 6 Grey, 368.*

In the House of Representatives it has not been usual for the Member to withdraw when his private interests are concerned in a pending measure; but the House has provided by rule (Rule VIII, § 1) that the Member shall not vote in such a contingency. In one instance the Senate disallowed a vote given by a Senator on a question relating to his own right to a seat; but the House has never had occasion to proceed so far (V, 5959).

No Member is to come into the House with his head covered, nor to remove from one place to another with his hat on, nor is to put on his hat in coming in or removing, until he be set down in his place. *Scob., 6.*

Until 1837 the parliamentary practice of wearing hats during the session continued in the House; but in that year it was abolished by rule (Rule XIV, § 7).

§ 370. Wearing of hats by Members. A question of order may be adjourned to give time to look into precedents. *2 Hats., 118.*

The Speaker once declined, on a difficult question of order, to rule until he had taken time for examination (III, 2725); but it is conceivable that a case might arise wherein this privilege of the Chair would require approval of the majority of the House, to prevent arbitrary obstruction of the pending business by the Chair. The law of Parliament evidently contemplates that the adjournment of a question of order shall be controlled by the House.

§ 371. Adjournment of questions of order. In Parliament, all decisions of the Speaker may be controlled by the House. *3 Grey, 319.*

§ 372. House's control over decisions of the Speaker. The House of Representatives provides for controlling decisions of the Speaker by appeal (Rule I, § 4).

SEC. XVIII.—ORDERS OF THE HOUSE.

Of right, the door of the House ought not to be shut, but to be kept by porters, or Sergeants-at-Arms, assigned for that purpose. *Mod ten. Parl., 23.*

§ 373. Keeping of the doors of the House.

§§ 374-376.

The doors of the House of Representatives are kept by the Doorkeeper and his assistants (Rule V, § 1).

The only case where a Member has a right to insist on anything, is where he calls for the execution of a subsisting order of the House. Here there having been already a resolution, any person has a right to insist that the Speaker, or any other whose duty it is, shall carry it into execution; and no debate or delay can be had on it. Thus any Member has a right to have the House or gallery cleared of strangers, an order existing for that purpose; or to have the House told when there is not a quorum present. *2 Hats., 87, 129.* How far an order of the House is binding, see *Hakew., 392.*

§ 374. Right of the Member to demand execution of the subsisting order.

§ 375. Parliamentary law for clearing the galleries.

Any Member has a right at any time to demand the execution of a rule or order of the House of Representatives, including the rule prescribing the daily order of business (IV, 3058). He does this by calling for the "regular order." He may not, however, demand that the galleries be cleared, as the House, in which this power resides (II, 1353), has by rule extended the power to the Speaker (Rule I, § 2) and the chairman of the Committee of the Whole (Rule XXIII, § 1), but not to the individual Member.

But where an order is made that any particular matter be taken up on a particular day, there a question is to be put, when it is called for, whether the House will now proceed to that matter? Where orders of the day are on important or interesting matter, they ought not to be proceeded on till an hour at which the House is usually full [which in Senate is at noon].

§ 376. Parliamentary law as to proceeding with orders of the day.

The rule of the House of Representatives providing for raising the question of consideration (Rule XVI, § 3) has, in connection with the practice as to special orders, superseded this provision of the parliamentary law. The

House always proceeds with business at its hour of meeting, unless prevented by a point that no quorum is present (IV, 2732).

Orders of the day may be discharged at any time,

§ 377. Orders of the day now obsolete. and a new one made for a different day.
3 Grey, 48, 313.

The House of Representatives found the use of "Orders of the day" as a method of disposing business impracticable as long ago as 1818, and not long after abandoned their use (IV, 3057), although an interesting reference to them survives in Rule XXIV, § 1. The House sometimes uses "Special orders," but its business proceeds regularly by Rule XXIV.

When a session is drawing to a close and the important bills are all brought in, the
§ 378. Business at the end of a session. House, in order to prevent interruption by further unimportant bills, sometimes comes to a resolution that no new bill be brought in, except it be sent from the other House. 3 Grey, 156.

This provision is obsolete so far as the practice of the House of Representatives is concerned, as business goes on uninterruptedly until the Congress expires (Rule XXVI).

All orders of the House determine with the session; and one taken under such an order may,
§ 379. Effect of end of the session on existing orders, especially as to imprisonment. after the session is ended, be discharged on a habeas corpus. Raym., 120; Jacob's L. D. by Ruffhead; Parliament, 1 Lev., 165, Pitchara's case.

The House of Representatives, by Rule XXVII and the practice thereunder, has modified the rule of Parliament as to business pending at the end of a session which is not at the same time the end of a Congress. A standing order, like that providing for the hour of daily meeting of the House, expires with a session (I, 104-109); but the House uses few standing orders. In 1866 the House discussed its power to imprison for a period longer than the duration of the existing session (II, 1629), and in 1870, for assaulting a Member returning to the House from absence on leave, Patrick Woods was committed for a term extending beyond the adjournment of the session, but not beyond the term of the existing House (II, 1628).

§§ 380, 381.

Where the Constitution authorizes each House to determine the rules of its proceedings, it must mean in those cases (legislative, executive, or judiciary) submitted to them by the Constitution, or in something relating to these, and necessary toward their execution. But orders and resolutions are sometimes entered in the journals having no relation to these, such as acceptances of invitations to attend orations, to take part in procession, etc. These must be understood to be merely conventional among those who are willing to participate in the ceremony, and are therefore, perhaps, improperly placed among the records of the House.

The House of Representatives has frequently examined its constitutional power to make rules, and this power has also been discussed by the Supreme Court (V, 6755). It has been settled that Congress may not by law interfere with the constitutional right of a future House to make its own rules (I, 82; V, 6765, 6766), or to determine for itself the order of proceedings in effecting its organization (I, 242-245; V, 6765, 6766). It has also been determined, after long discussion and trial by practice, that one House may not continue its rules in force to and over its successor (I, 187, 210; V, 6002, 6743-6747). A law passed by the existing Congress has been recognized as of binding force in matters of procedure (II, 1341; V, 6767, 6768); but when a law passed by a preceding Congress has assumed to lay down a rule of procedure the House has inclined to doubt the validity of the law (V, 6765, 6766), and in one case the Chair has denied the authority of a law of this nature which was in conflict with a rule of the House (IV, 3579). The theories involved in this question have been most carefully examined and decisively determined in reference to the law of 1851, which directs the method of procedure for the House in its constitutional function of judging the elections of its Members; and it has been determined that this law is not of absolute binding force on the House, but rather a wholesome rule not to be departed from except for cause (I, 597, 713, 726, 833; II, 1122).

As to the participation on occasions of ceremony, the House has entered its orders on its journal; but it rarely attends outside the Capitol building

as a body, usually preferring that its Members go individually (V, 7061-7064) or that it be represented by a committee (V, 7053-7056). It has discussed, but not settled, its power to compel a Member to accompany it without the Hall on an occasion of combined business and ceremony (II, 1139).

SEC. XIX.—PETITION.

§ 382. Petitions,
remonstrances,
and memorials.

A petition prays something. A remonstrance has no prayer. *1 Grey, 58.*

The rules of the House of Representatives make no mention of remonstrances, but do mention petitions and memorials (Rule XXII, § 1). Resolutions of state legislatures and of primary assemblies of the people are received as memorials (IV, 3326, 3327), but papers general or descriptive in form may not be presented as memorials (IV, 3325).

Petitions must be subscribed by the petitioners *Scob., 87; L. Parl., c. 22; 9 Grey, 362,* unless they are attending, *1 Grey, 401,* or unable to sign, and averred by a member, *3 Grey, 418.* But a petition not subscribed, but which the member presenting it affirmed to be all in the handwriting of the petitioner, and his name written in the beginning, was on the question (March 14, 1800) received by the Senate. The averment of a member, or of somebody without doors, that they know the handwriting of the petitioners, is necessary, if it be questioned. *6 Grey, 36.* It must be presented by a member, not by the petitioners, and must be opened by him holding it in his hand. *10 Grey, 57.*

In the House of Representatives petitions have been presented for many years by filing with the Clerk (Rule XXII, § 1). Members file them, and petitioners do not attend on the House in the sense implied in the parliamentary law. In cases where a petition set forth serious charges, the petitioner was required to have his signature attested by a notary (III, 2030, footnote).

§§ 384, 385.

Regularly a motion for receiving it must be made and seconded, and a question put, whether it shall be received? but a cry from the House of "received," or even silence, dispenses with the formality of this question. It is then to be read at the table and disposed of.

Prior to the adoption of the provisions of Rule XXII, § 1, petitions were presented from the floor by Members, and questions frequently arose as to the reception thereof (IV, 3350-3356). But under the present practice such procedure does not occur.

SEC. XX.—MOTIONS.

When a motion has been made, it is not to be put to the question or debated until it is seconded. *Scob., 21.*

§ 385. Parliamentary law as to making, withdrawing, and reading of motions.

It is then, and not till then, in possession of the House, and can not be withdrawn but by leave of the House. It is to be put into writing, if the House or Speaker require it, and must be read to the House by the Speaker as often as any Member desires it for his information. *2 Hats., 82.*

The rules of the House of Representatives (Rule XVI, §1) have long since dispensed with the requirement of a second for ordinary motions (V, 5304). Rule XVI, §2, provides further that a motion may be withdrawn "before decision or amendment;" and §1 of the same rule provides that the motion shall be reduced to writing "on the demand of any Member." In the practice of the House, when a paper on which the House is to vote has been read once, the reading may not be required again unless the House shall order it read (V, 5260); but it does not appear that this modifies the provision of the parliamentary law that mere motions, not in the nature of amendments or documents, shall be read as often as is desired for information.

It might be asked whether a motion for adjournment or for the orders of the day can be made by one Member while another is speaking? It can not. When two

§ 386. Interruptions of the Member having the floor.

Members offer to speak, he who rose first is to be heard, and it is a breach of order in another to interrupt him, unless by calling him to order if he departs from it. And the question of order being decided, he is still to be heard through. A call for adjournment, or for the order of the day, or for the question, by gentlemen from their seats, is not a motion. No

§ 387. Members required to rise to make motions, call for the order of business, etc.

motion can be made without rising and addressing the Chair. Such calls are themselves breaches of order, which, though the Member who has risen may respect, as an expression of impatience of the House against further debate, yet, if he chooses, he has a right to go on.

The practice of the House of Representatives has modified the principle that the Member who rises first is to be recognized (Rule XIV, § 2); but in other respects the principles of this paragraph of the parliamentary law are in force.

When the House commands, it is by an "order."

§ 388. Orders and resolutions of the House.

But fact, principles, and their own opinions and purposes, are expressed in the form of resolutions.

A resolution for an allowance of money to the clerks being moved, it was objected to as not in order, and so ruled by the Chair; but on appeal to

§§ 389, 390.

the Senate (*i. e.*, a call for their sense by the President, on account of doubt in his mind, according to Rule XX, clause 2) the decision was overruled. *Jour., Senate, June 1, 1796.* I presume the doubt was, whether an allowance of money could be made otherwise than by bill.

In the modern practice concurrent resolutions have been developed as a means of expressing fact, principles, opinions, and purposes of the two Houses (II, 1566, 1567). Joint committees are authorized by resolutions of this form (III, 1998, 1999). A concurrent resolution is binding on neither House until agreed to by both (IV, 3379). It is not sent to the President for approval unless it contain a proposition of legislation, which is not within the scope of the modern form of concurrent resolution (IV, 3484).

§ 389. Concurrent resolutions of the two Houses.

Another development of the modern practice is the joint resolution, which is a bill so far as the processes of the Congress in relation to it are concerned (IV, 3375). With the exception of joint resolutions proposing amendments to the Constitution (V, 7029), all these resolutions are sent to the President for approval and have the full force of law. They are used for what may be called the incidental, unusual, or inferior purposes of legislating (IV, 3372), as extending the national thanks to individuals (IV, 3370), the invitation to La Fayette to visit America (V, 7082, footnote), the welcome to Kossuth (V, 7083), notice to a foreign government of the abrogation of a treaty (V, 6270), declaration of intervention in Cuba (V, 6321), correction of an error in an existing act of legislation (IV, 3519), election of managers for National Soldiers' Homes (V, 7336), special appropriations for minor and incidental purposes (V, 7319). At one time they were used for purposes of general legislation; but the two Houses finally concluded that a bill was the proper instrumentality for this purpose (IV, 3370-3373). A joint resolution has been changed to a bill by amendment (IV, 3374), but in the later practice it has become impracticable to do so.

§ 390. Joint resolutions.

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SEC. XXIII.—BILLS, LEAVE TO BRING IN.

When a Member desires to bring in a bill on any subject, he states to the House in general terms the causes for doing it, and concludes by moving for leave to bring in a bill, entitled, &c. Leave being given, on the question, a committee is appointed to prepare and bring in the bill. The mover and seconder are always appointed of this committee, and one or more in addition. *Hakew.*, 132; *Scob.*, 40. It is to be presented fairly written, without any erasure or interlineation, or the Speaker may refuse it. *Scob.*, 41; *1 Grey*, 82, 84.

§ 391. Obsolete provisions as to introduction of bills.

This provision is obsolete, Rule XXII, §§ 1-3, providing an entirely different method of introducing bills. The introduction of bills by leave was gradually dropped by the practice of the House, and after 1850 the present free system of permitting Members to introduce at will bills for printing and reference began to develop (IV, 3365).

SEC. XXIV.—BILLS, FIRST READING.

When a bill is first presented, the Clerk reads it at the table, and hands it to the Speaker, who, rising, states to the House the title of the bill; that this is the first time of reading it; and the question will be, whether it shall be read a second time? then sitting down to give an opening for objections. If none be made, he rises again, and puts the question, whether it shall be read a second time? *Hakew.*, 137, 141. A

§ 392. Obsolete requirements as to first reading of bills.

§ 393.

bill cannot be amended on the first reading, *6 Grey*, 286; nor is it usual for it to be opposed then, but it may be done, and rejected. *D'Ewes*, 335, col. 1; *3 Hats.*, 198.

This provision is obsolete, the practice under Rule XXI, § 1, now governing the procedure of the House of Representatives.

SEC. XXV.—BILLS, SECOND READING.

The second reading must regularly be on another day. *Hakew.*, 143. It is done by the Clerk at the table, who then hands it to the Speaker. The Speaker, rising, states to the House the title of the bill; that this is the second time of reading it; and that the question will be, whether it shall be committed, or engrossed and read a third time? But if the bill came from the other House, as it always comes engrossed, he states that the question will be, whether it shall be read a third time? and before he has so reported the state of the bill, no one is to speak to it. *Hakew.*, 143, 146.

In the Senate of the United States, the President reports the title of the bill; that this is the second time of reading it; that it is now to be considered as in a Committee of the Whole; and the question will be, whether it shall be read a third time? or that it may be referred to a special committee?

The provisions of this paragraph are to a large extent obsolete so far as the House of Representatives is concerned, the practice under Rule XXI, § 1, now governing.

SEC. XXVI.—BILLS, COMMITMENT.

If on motion and question it be decided that the bill shall be committed, it may then be moved to be referred to Committee of the Whole House, or to a special committee. If the latter, the Speaker proceeds to name the committee. Any member also may name a single person, and Clerk is to write him down as of the committee. But the House have a controlling power over the names and number, if a question be moved against any one; and may in any case put in and put out whom they please.

§ 394. Parliamentary law (largely obsolete) as to reference of bills to committees.

This paragraph is to a large extent obsolete under the rules and practice of the House of Representatives. Bills are referred in the first instance by the Speaker to standing committees as prescribed by the rules (Rules XI, XXII, §§ 1, 2), and references to the Committee of the Whole are also made in the first instance under direction of the Speaker (Rule XIII, § 2). Reference of a matter under consideration is made by a motion to refer which specifies the committee and may provide for a select committee of a specified number of persons (IV, 4402). But such committee is appointed only by the Speaker (Rule X, § 2).

House of Representatives Rule XVII provides that the Speaker may entertain a motion to commit with or without instructions to a standing committee.

Those who take exceptions to some particulars in the bill are to be of the committee, but none who speak directly against the body of the bill; for he that would totally destroy will not amend it, *Hakew.*, 146; *Town.*, col., 208; *D'Ewes*, 634, col. 2; *Scob.*, 47; or as is said, 5 *Grey*, 145, the child is not to be put to a nurse that cares not for it, 6 *Grey*, 373. It is there-

§ 395. Obsolete provisions as to constitution of committees.

§§ 336-398.

fore a constant rule "that no man is to be employed in any matter who has declared himself against it." And when any member who is against the bill hears himself named of its committee he ought to ask to be excused. Thus, March 7, 1806, Mr. Hadley was, on the question being put, excused from being of a committee, declaring himself to be against the matter itself. *Scob.*, 46.

This provision is entirely inapplicable in the House of Representatives, where the standing committees with majority and minority representation (IV, 4467, 4477, footnote, 4478) consider most of the bills. And in the infrequent occasions when a select committee is appointed the minority party is always represented in the membership.

The Clerk may deliver the bill to any member of the committee, *Town.*, col. 138; but it is usual to deliver it to him who is first named.

§ 396. Delivery of bills to committees.

Where committees have clerks and rooms, the bills are delivered to the clerk in the room.

In some cases the House has ordered a committee to withdraw immediately into the committee chamber and act on and bring back the bill, sitting the House. *Scob.*, 48. * * *

§ 397. Obsolete provision for ordering a committee to withdraw and bring back a bill.

This procedure is never followed in the House of Representatives, as the order of business leaves no place for such an order, except it be offered by unanimous consent.

When a bill is under consideration, however, the House may on motion commit it with instructions to report "forthwith" with certain specified amendment (V, 5548, 5549), in which case the chairman of the committee reports at once without awaiting action of the committee (V, 5545-5547) and the bill is in order for immediate consideration (V, 5550).

§ 398. Committal with directions to report forthwith.

The motion to discharge a committee from the consideration of an ordinary legislative proposition is not privileged under the rules (IV, 3533, 4693), but where a matter involves a question of privilege (III, 2585, 2709) or is privileged under the rule relating to resolutions of inquiry (Rule XXII, § 5; III, 1871; IV, 4695) the motion to discharge is admitted. The motion is not debatable (III, 1868; IV, 4695) and may be laid on the table (V, 5407), but the question of consideration may not be demanded against it (V, 4977).

* * * A committee meet when and where they please, if the House has not ordered time and place for them, *6 Grey, 370*; but they can only act when together, and not by separate consultation and consent—nothing being the report of the committee but what has been agreed to in committee actually assembled.

§ 400. Meetings
and action of
committees.

In the House of Representatives the standing committees usually meet in their committee rooms, but there is no rule requiring them to meet there.

The House has adhered to the principle that a report must be authorized by a committee acting together, and a paper signed by a majority of the committee acting separately was ruled out (IV, 4584) (Speaker Clark, Aug. 20, 1912, p. 11398; also May 17, 1918, p. 6689; also Chairman Campbell, July 18, 1921, pp. 4016, 4069). A report is sometimes authorized by less than a majority of the whole committee, some members being silent or absent (II, 985, 986). In a rare instance a majority of a committee agreed to a report, but disagreed on the facts necessary to sustain the report (I, 819). It is not uncommon for a committee to find itself unable to agree to a positive recommendation, being equally divided, in which case it may report the fact to the House (I, 347; IV, 4665, 4666), sometimes with evidence and majority and minority views (III, 2403), with minority views alone (II, 945), or with propositions representing the opposing contentions (III, 2497; IV, 4664). It is not essential that the report of a committee be signed (II, 1274), but the minority views are signed by those concurring in them (IV, 4671). In case where a majority of a committee signed a report it was held valid, although a necessary one of that majority did not concur in all the statements (IV, 4587). If a report is actually sustained by the majority of a committee, it is not impeached by the fact that a less number sign it (II, 1091), or by the fact that later by the action of absentees more than a majority of the whole committee are

§ 401. Authoriza-
tion of reports of
committees.

§§ 402-404.

found to have signed minority views (IV, 4585). Objection being made that a report had not been authorized by a committee and there being doubt as to the validity of the authorization, the question as to the reception of the report is submitted to the House (IV, 4588-4591). But where the Speaker is satisfied of the validity or of the invalidity of the authorization he may decide the question (IV, 4584, 4592, 4593). (Speaker Clark, Aug. 20, 1912, p. 11398; also May 17, 1918, p. 6689; Speaker Gillett, June 17, 1922, p. 8928.) And in a case wherein it was shown that a majority of a committee had met and authorized a report he did not heed the fact that the meeting was not regularly called (IV, 4594). A bill improperly reported is not entitled to its place on the calendar (IV, 3117); but the validity of a report may not be questioned after the House has voted to consider it (IV, 4598) or after actual consideration has begun (IV, 4599). (Speaker Gillett, Oct. 9, 1919, p. 6652.)

§ 402. The quorum of a select or standing committee.

A majority of the committee constitutes a quorum for business. *Elsynge's Method of Passing Bills, 11.*

A quorum of a committee may transact business and a majority of the quorum, even though it be a minority of the whole committee, may authorize a report (IV, 4586), but an actual quorum of a committee must be present to make action taken valid. (Speaker Clark, May 17, 1918, p. 6689; Speaker Gillett, June 17, 1922, p. 8928.) The validity of testimony taken before less than a quorum of a committee has been doubted (III, 1774); but the House may authorize less than a quorum to act (IV, 4553, 4554).

Any Member of the House may be present at any select committee, but can not vote, and must give place to all of the committee, and sit below them. *Elsynge, 12; Scob., 49.*

§ 403. Presence of a Member of the House in a select committee.

It does not appear that the relations of this provision to the principle that a committee may conduct its proceedings in secret (IV, 4557-4564) has been determined in the House of Representatives.

The committee have full power over the bill or other paper committed to them, except that they can not change the title or subject. *8 Grey, 228.*

§ 404. Power of committees over the body and title of a bill.

In the House of Representatives committees may recommend amendments to the body of a bill or to the title but may not otherwise change the text.

§ 405. Parliamentary law governing consideration of bills, etc., in committees.

The paper before a committee, whether select or of the whole, may be a bill, resolutions, draught of an address, &c., and it may either originate with them or be referred to them. In every case the whole paper is read first by the Clerk, and then by the chairman, by paragraphs, *Scob.*, 49, pausing at the end of each paragraph, and putting questions for amending, if proposed. In the case of resolutions or distinct subjects, originating with themselves, a question is put on each separately, as amended or unamended, and no final question on the whole, *3 Hats.*, 276; but if they relate to the same subject, a question is put on the whole. If it be a bill, draught of an address, or other paper originating with them, they proceed by paragraphs, putting questions for amending, either by insertion or striking out, if proposed; but no question on agreeing to the paragraphs separately; this is reserved to the close, when a question is put on the whole, for agreeing to it as amended or unamended. But if it be a paper referred to them, they proceed to put questions of amendment, if proposed, but no final question on the whole; because all parts of the paper, having been adopted by the House, stand, of course, unless altered or struck out by a vote. Even if they are opposed to the whole paper, and think it can not be made good by amendments, they can not reject it, but must report it back to the House without amendments, and there make their opposition.

§§ 406, 407.

In the House of Representatives it has generally been held that a select or standing committee may not report a bill whereof the subject-matter has not been referred to them (IV, 4355-4360). In the older practice the Committee of the Whole originated resolutions and bills (IV, 4705); but the later development of the rules governing the order of business would prevent the offering of a motion to go into Committee of the Whole for such a purpose, except by unanimous consent.

The natural order in considering and amending any paper is, to begin at the beginning, and proceed through it by paragraphs; and this order is so strictly adhered to in Parliament, that when a latter part has been amended, you can not recur back and make any alteration in a former part. *2 Hats., 90.* In numerous assemblies this restraint is doubtless important. But in the Senate of the United States, though in the main we consider and amend the paragraphs in their natural order, yet recurrences are indulged; and they seem, on the whole, in that small body, to produce advantages overweighing their inconveniences.

In the House of Representatives amendments to paragraphs or sections are made in Committee of the Whole under Rule XXIII, § 5. In the House itself amendments to House bills are made pending the engrossment and third reading (IV, 3392; V, 5781) and to Senate bills before the third reading (IV, 3393). Amendments are offered to any part of the bill, without proceeding consecutively with the several paragraphs or sections (IV, 3392). In Committee of the Whole the procedure is different.

To this natural order of beginning at the beginning, there is a single exception found in parliamentary usage. When a bill is taken up in committee, or on its second reading, they postpone the preamble till the other parts of the bill are gone through. The reason is,

§ 406. Order of
amending bills
in the House.

§ 407. Preamble
amended after
the body of the
bill has been
considered.

that on consideration of the body of the bill such alterations may therein be made as may also occasion the alteration of the preamble. *Scob.*, 50; 7 *Grey*, 431.

On this head the following case occurred in the Senate, March 6, 1800: A resolution which had no preamble having been already amended by the House so that a few words only of the original remained in it, a motion was made to prefix a preamble, which having an aspect very different from the resolution, the mover intimated that he should afterwards propose a correspondent amendment in the body of the resolution. It was objected that a preamble could not be taken up till the body of the resolution is done with; but the preamble was received, because we are in fact through the body of the resolution; we have amended that as far as amendments have been offered, and, indeed, till little of the original is left. It is the proper time, therefore, to consider a preamble; and whether the one offered be consistent with the resolution is for the House to determine. The mover, indeed, has intimated that he shall offer a subsequent proposition for the body of the resolution; but the House is not in possession of it; it remains in his breast, and may be withheld. The rules of the House can only operate on what is before them. The practice of the Senate, too, allows recurrences backward and forward for the purpose of amendment, not permitting amendments in a subsequent to preclude those in a prior part, or *e converso*.

§§ 408-410.

In the practice of the House of Representatives the preamble of a bill or joint resolution is agreed to most conveniently after the engrossment and before the third reading (IV, 3414; V, 5469, 5470). On the passage of a bill or joint resolution a separate vote may not be demanded on the preamble (V, 6147, 6148); but where a simple resolution of the House has a preamble, the preamble may be laid on the table without affecting the status of the accompanying resolution (V, 5430).

When the committee is through the whole, a Member moves that the committee may rise, and the chairman report the paper to the House, with or without amendments, as the case may be. *2 Hats., 289, 292; Scob., 53; 2 Hats., 290; 8 Scob., 50.*

In the House of Representatives a committee may order its report to be made by the chairman (IV, 4669) or by any other member of the committee (IV, 4526), even though he be a member of the minority party (IV, 4672, 4673). Only the chairman makes report for the Committee of the Whole (V, 6987).

When a vote is once passed in a committee it can not be altered but by the House, their votes being binding on themselves. *1607, June 4.*

§ 409. As to reconsideration of a vote in committee.

This provision of the parliamentary law has been held to prevent the use of the motion to reconsider in Committee of the Whole (IV, 4716-4718), and the practice seems to have inclined against the use of the motion in a standing or select committee (IV, 4596, 4571), but there is a precedent which authorizes the use of the motion (IV, 4570, 4596), and on June 1, 1922, the Committee on Rules rescinded previous action taken by the Committee authorizing a report. This provision does not prevent a committee from reporting a bill similar to one previously reported by such committee. (Speaker Longworth, Mar. 12, 1926, 1st sess. 69th Cong., p. 5477.)

The committee may not erase, interline, or blot the bill itself; but must, in a paper by itself set down the amendments, stating the words which are to be inserted or omitted, *Scob., 50*, and where, by references to page, line, and word of the bill. *Scob., 50.*

§ 410. Method of noting amendments to a bill in committee.

This practice is still in force as to Senate bills, of which the engrossed copies can not be in any way interlined or altered by House committees. But the care for the preservation of the original copies of House bills has long since become obsolete.

SEC. XXVII.—REPORT OF COMMITTEE.

§ 411. Parliamentary method of submitting reports. The chairman of the committee, standing in his place, informs the House that the committee to whom was referred such a bill, have, according to order, had the same under consideration, and have directed him to report the same without any amendment, or with sundry amendments (as the case may be), which he is ready to do when the House pleases to receive it. And he or any other may move that it be now received; but the cry of “now, now,” from the House, generally dispenses with the formality of a motion and question. He then reads the amendments, with the coherence in the bill, and opens the alterations and the reasons of the committee for such amendments, until he has gone through the whole. He then delivers it at the Clerk’s table, where the amendments reported are read by the Clerk without the coherence; whereupon the papers lie upon the table till the House, at its convenience, shall take up the report. *Scob.*, 52; *Hakew.*, 148.

This provision is to a large extent obsolete so far as the practice of the House of Representatives is concerned. Most of the reports of committees are made by filing them with the Clerk without reading (Rule XIII, § 2), and only the reports of committees having leave to report at any time are made by the chairman or other member of the committee from the floor (Rule XI, § 61). While the privileged reports are frequently acted on when presented, yet the general rule (Rule XIII, § 1) is that reports shall be placed on the calendars of the House, there to await action under the rules for the order of business (Rule XXIV).

§ 412-413.

The report being made, the committee is dissolved, and can act no more without a new power. *Scob.*, 51. But it may be revived by a vote, and the same matter recommitted to them. 4 *Grey*, 361.

This provision does not apply to the Committees of the Whole as they exist in the House of Representatives at the present time or to the standing committees. It does apply to select committees, which expire when they report finally, but may be revived by the action of the House in referring in open House a new matter (IV, 4404, 4405). A select committee expires at the end of a session (IV, 4394-4399), and this limitation applies also to joint select committees (IV, 4420). The provision does not preclude a standing committee from reporting a bill similar to one previously reported by such committee. (Speaker Longworth, Mar. 12, 1926, 1st sess. 69th Cong., p. 5477.)

SEC. XXVIII.—BILL, RECOMMITMENT.

After a bill has been committed and reported, it ought not, in an ordinary course, to be recommitted; but in cases of importance, and for special reasons, it is sometimes recommitted, and usually to the same committee. *Hakew.*, 151. If a report be recommitted before agreed to in the House, what has passed in committee is of no validity; the whole question is again before the committee, and a new resolution must be again moved, as if nothing had passed. 3 *Hats.*, 131—note.

§ 413. Recommendation of a bill to a committee.

In Senate, January, 1800, the salvage bill was recommitted three times after the commitment.

Where a matter is recommitted with instructions the committee must confine itself within the instructions (IV, 4404), and if the instructions relate to a certain portion only of a bill, other portions may not be reviewed (V, 5526). When a report has been disposed of adversely a motion to recommit it is not in order (V, 5559). Bills are sometimes recommitted to the

Committee of the Whole as the indirect result of the action of the House (Rule XXIII, § 7; IV, 4784) or directly on motion either with or without instructions (V, 5552, 5553).

A particular clause of a bill may be committed without the whole bill, *3 Hats., 131*; or so much of a paper to one and so much to another committee.

§ 414. Division of matters for reference to committees.

In the usage of the House before the rules provided that petitions should be filed with the Clerk instead of being referred from the floor, it was the practice to refer a portion of a petition to one committee and the remainder to another when the subject matter called for such division (IV, 3359). Communications, such as the report of the managers of the Soldiers' Home, are sometimes divided for reference. But a bill or a joint resolution (IV, 4376) may not be divided, although it may contain matters properly within the jurisdiction of several committees (IV, 4372).

SEC. XXIX.—BILL, REPORTS TAKEN UP.

When the report of a paper originating with a committee is taken up by the House, they proceed exactly as in committee. Here, as in committee, when the paragraphs have, on distinct questions, been agreed to *seriatim*, *5 Grey, 366*; *6 Grey, 368*; *8 Grey, 47, 104, 360*; *1 Torbuck's Deb., 125*; *3 Hats., 348*, no question needs be put on the whole report. *5 Grey, 381*.

§ 415. Consideration and action on reports.

In the House of Representatives committees usually report bills, joint resolutions, concurrent resolutions, or simple resolutions. These come before the House for action while the written reports accompanying them, which are always printed, do not (IV, 4674), and even the reading of the reports is in order only in the time of debate (V, 5292). In rare instances, however, committees submit merely written reports without propositions for action. Such reports being before the House may be debated before any specific motion has been made (V, 4987, 4988), and are in such case read to the House (IV, 4663) and after being considered the question is taken on

§ 416.

agreeing. In such cases the report appears in full on the Journal (II, 1364, IV, 4675; V, 7177). When reports are acted on in this way it has not been the practice of the House to consider them by paragraphs, but the question has been put on the whole report (II, 1364).

On taking up a bill reported with amendments the amendments only are read by the Clerk. The Speaker then reads the first, and puts it to the question, and so on till the whole are adopted or rejected, before any other amendment be admitted, except it be an amendment to an amendment. *Elsynge's Mem.*, 53. When through the amendments of the committee, the Speaker pauses, and gives time for amendments to be proposed in the House to the body of the bill; as he does also if it has been reported without amendments; putting no questions but on amendments proposed; and when through the whole, he puts the question whether the bill shall be read a third time?

The procedure outlined by this provision of the parliamentary law applies to bills when reported from the Committee of the Whole; but in practice it is usual to vote on the amendments in gross. But any Member may demand a separate vote. The principle that the committee amendments should be voted on before amendments proposed by the House is recognized (IV, 4872-4876) except when it is proposed to amend a committee amendment. The Clerk reads the amendments, and the Speaker does not again read them. Frequently the House orders the previous question on the committee amendments and the bill to final passage, thus preventing further amendment. When a bill is of such nature that it does not go to Committee of the Whole, it comes before the House from the House Calendar, on which it has been placed on being reported from the standing or select committee. On being taken from the House Calendar the bill is read through and then the amendments proposed by the committee are read.

SEC. XXX.—QUASI-COMMITTEE.

If on motion and question the bill be not committed, or if no proposition for commitment be made, then the proceedings in the Senate of the United States and in Parliament are totally different. The former shall be first stated.

§ 417. Procedure
"in the House as
in Committee of
the Whole."

The proceeding of the Senate as in a Committee of the Whole, or in quasi-committee, is precisely as in a real Committee of the Whole, taking no question but on amendments. When through the whole, they consider the quasi-committee as risen, the House resumed without any motion, question, or resolution to that effect, and the President reports that "the House, acting as in a Committee of the Whole, have had under their consideration the bill entitled, &c., and have made sundry amendments, which he will now report to the House." The bill is then before them, as it would have been if reported from a committee, and the questions are regularly to be put again on every amendment; which being gone through, the President pauses to give time to the House to propose amendments to the body of the bill, and, when through, puts the question whether it shall be read a third time?

In the House of Representatives procedure "in the House as in Committee of the Whole" is by unanimous consent only, as the order of business gives no place for a motion that business be considered in this manner (IV, 4923). In the House an order for this procedure means merely that the bill will be read for amendment and debate under the five-minute rule (Rule XXIII, § 5), without general debate. (IV, 4924, 4925, Speaker

§§ 418, 419.

Clark, May 26, 1911, 62d Cong., 1st sess., p. 1611.) The Speaker remains in the chair, and when the bill has been gone through, he makes no report but puts the question on the engrossment and third reading and on the passage.

After progress in amending the bill in quasi-committee, a motion may be made to refer it to a special committee. If the motion prevails, it is equivalent in effect to the several votes, that the committee rise, the House resume itself, discharge the Committee of the Whole, and refer the bill to a special committee. In that case, the amendments already made fall. But if the motion fails, the quasi-committee stands *in statu quo*.

How far does this XXVIIIth rule [of the Senate] subject the House, when in quasi-committee, to the laws which regulate the proceedings of Committees of the Whole? The particulars in which these differ from proceedings in the House are the following: 1. In a committee every member may speak as often as he pleases. 2. The votes of a committee may be rejected or altered when reported to the House. 3. A committee, even of the whole, cannot refer any matter to another committee. 4. In a committee no previous question can be taken; the only means to avoid an improper discussion is to move that the committee rise; and if it be apprehended that the same discussion will be attempted on returning into committee, the House can discharge them, and proceed itself on the business, keeping down the im-

§ 418. Motion to refer admitted
"in the House as in Committee of the Whole."

§ 419. Motions and procedure in quasi-committee in Jefferson's time.

proper discussion by the previous question. 5. A committee cannot punish a breach of order in the House or in the gallery. *9 Grey, 113.* It can only rise and report it to the House, who may proceed to punish. The first and second of these peculiarities attach to the quasi-committee of the Senate, as every day's practice proves, and it seems to be the only ones to which the XXVIIIth rule meant to subject them; for it continues to be a House, and, therefore, though it acts in some respects as a committee, in others it preserves its character as a House. Thus (3) it is in the daily habit of referring its business to a special committee. 4. It admits of the previous question. If it did not, it would have no means of preventing an improper discussion; not being able, as a committee is, to avoid it by returning into the House, for the moment it would resume the same subject there, the XXVIIIth rule declares it again a quasi-committee. 5. It would doubtless exercise its powers as a House on any breach of order. 6. It takes a question by yea and nay, as the House does. 7. It receives messages from the President and the other House. 8. In the midst of a debate it receives a motion to adjourn, and adjourns as a House, not as a committee.

In the modern practice of the House of Representatives the rule of Jefferson's Manual is followed to the extent that the House, while acting "in the House as in Committee of the Whole" may deal with disorder, take the yeas and nays, adjourn, refer to a committee even though the reading by sections may not have begun (IV, 4931, 4932), and use the previous question (which differs from the previous question of Jefferson's

§ 420. Motions
and procedure
"in the House as
in Committee of
the Whole."

§ 421.

time). But the previous question may not be moved on a single section of a bill (IV, 4930); but it may be demanded on the bill while Members yet desire to offer amendments (IV, 4926-4929). A motion to close debate on the pending section is in order (IV, 4930). An amendment may be withdrawn at any time before action has been had on it (IV, 4935). An amendment in the nature of a substitute is in order only after consideration by sections has been completed (IV, 4933, 4934). The title also is amended after the bill has been considered (IV, 3416).

SEC. XXXI.—BILL, SECOND READING IN THE HOUSE.

§ 421. Manner of
reading a bill the
second time.

In Parliament, after the bill has been read a second time, if on the motion and question it be not committed, or if no proposition for commitment be made, the speaker reads it by paragraphs, pausing between each, but putting no question but on amendments proposed; but when through the whole, he puts the question whether it shall be read a third time, if it came from the other house, or, if originating with themselves, whether it shall be engrossed and read a third time. The speaker reads sitting, but rises to put questions. The clerk stands while he reads.

But the Senate of the United States is so much in the habit of making many and material amendments at the third reading that it has become the practice not to engross a bill till it has passed—an irregular and dangerous practice, because in this way the paper which passes the Senate is not that which goes to the other House, and that which goes to the other House as the act of the Senate has never been seen in the Senate. In reducing numerous, difficult, and illegible amendments into the text the Secretary may,

with the most innocent intentions, commit errors which can never again be corrected.

In the House of Representatives the Clerk and not the Speaker or Chairman of the Committee of the Whole reads bills on second reading. After the second reading, which is in full, the bill is open to amendment.

The bill being now as perfect as its friends can make it, this is the proper stage for those § 422. Test of strength on engrossment after amendment. fundamentally opposed to make their first attack. All attempts at earlier periods are with disjointed efforts, because many who do not expect to be in favor of the bill ultimately, are willing to let it go on to its perfect state, to take time to examine it themselves and to hear what can be said for it, knowing that after all they will have sufficient opportunities of giving it their veto. Its two last stages, therefore, are reserved for this—that is to say, on the question whether it shall be engrossed and read a third time, and, lastly, whether it shall pass. The first of these is usually the most interesting contest, because then the whole subject is new and engaging, and the minds of the Members having not yet been declared by any trying vote the issue is the more doubtful. In this stage, therefore, is the main trial of strength between its friends and opponents, and it behooves everyone to make up his mind decisively for this question, or he loses the main battle; and accident and management may, and often do, prevent a successful rallying on the next and last question, whether it shall pass.

JEFFERSON'S MANUAL.

§§ 423-425.

In the House of Representatives there are two other means of testing
§ 423. Test of strength—one by raising the question of consideration
strength on a bill when the bill first comes up (Rule XVI, § 3), and the
before amending. other by moving to strike out the enacting words when
it is first open to amendment (Rule XXIII, § 7). By these methods an
adverse opinion may be expressed without permitting the bill to consume
the time of the House.

§ 424. Indorse-
ment of the title
on an engrossed
bill.

When the bill is engrossed the title is
to be indorsed on the back, and not
within the bill. *Hakew, 250.*

In the practice of the House of Representatives and the Senate the title
appears in its proper place in the engrossed bill, and also is indorsed, with
the number, on the back.

SEC. XXXII.—READING PAPERS.

Where papers are laid before the House or referred
to a committee every Member has a
§ 425. Parliamen- right to have them once read at the
tary law as to the table before he can be compelled to
reading of papers. vote on them; but it is a great though common error
to suppose that he has a right, *toties quoties*, to have
acts, journals, accounts, or papers on the table read
independently of the will of the House. The delay
and interruption which this might be made to pro-
duce evince the impossibility of the existence of such
a right. There is, indeed, so manifest a propriety
of permitting every Member to have as much infor-
mation as possible on every question on which he is
to vote, that when he desires the reading, if it be seen
that it is really for information and not for delay,
the Speaker directs it to be read without putting a

question, if no one objects; but if objected to, a question must be put. *2 Hats., 117, 118.*

The House, by Rule XXX, has made provision as to reading a paper other than that on which the House is called to give a final vote.

It is equally an error to suppose that any Member has a right, without a question put, to lay a book or paper on the table, and have it read, on suggesting that it contains matter infringing on the privileges of the House. *Ib.*

§ 426. Papers not necessarily to be read on plea of privilege.

For the same reason a Member has not a right to read a paper in his place, if it be objected to, without leave of the House. But this rigor is never exercised but where there is an intentional or gross abuse of the time and patience of the House.

§ 427. Member not always privileged to read a paper in his place.

A Member has not a right even to read his own speech, committed to writing, without leave. This also is to prevent an abuse of time, and therefore is not refused but where that is intended. *2 Grey, 227.*

A report of a committee of the Senate on a bill from the House of Representatives being under consideration: on motion that the report of the committee of the House of Representatives on the same bill be read in the Senate, it passed in the negative. *Feb. 28, 1793.*

§ 428. Reports of committees not read except on order or in debate.

In the House of Representatives ordinary reports are read only in time of debate (V, 5292), and subject to the authority of the House (V, 5293). But in a few cases, where a report does not accompany a bill or other

§§ 429-432.

proposition of action, but presents facts and conclusions, it is read to the House if acted on (II, 1364; IV, 4663).

Formerly, when papers were referred to a committee, they used to be first read; but of late only the titles, unless a Member insists they shall be read, and then nobody can oppose it. *2 Hats., 117.*

§ 429. Reading of papers on reference.

In the House of Representatives under the rules petitions and communications are referred through the Clerk's desk, so that there is no opportunity for reading before reference (Rule XXII, § 1; Rule XXIV, § 2). These rules do not apply to Presidents' messages, however.

SEC. XXXIII.—PRIVILEGED QUESTIONS.

It is no possession of a bill unless it be delivered to the Clerk to read, or the Speaker reads the title. *Lex. Parl., 274; Elysynge Mem., 85; Ord. House of Commons, 64.*

§ 430. Possession of a bill by the House.

It is a general rule that the question first moved and seconded shall be first put. *Scob., 28, 22; 2 Hats., 81.* But this rule gives way to what may be called privileged questions; and the privileged questions are of different grades among themselves.

§ 431. Theory as to privileged questions.

In the House of Representatives, by rule and practice the system of privileged motions and privileged questions has been highly developed (Rules XI, § 61; XVI, § 4; XXIV, § 1, etc.).

A motion to adjourn simply takes place of all others; for otherwise the House might be kept sitting against its will, and indefinitely. Yet this motion can not be received after another question is actually put and while the House is engaged in voting.

§ 432. Precedence of the motion to adjourn.

The rules and practice of the House of Representatives have prescribed comprehensively the privilege and status of the motion to adjourn (Rule XVI, § 4). The motion intervenes between the putting of the question and the voting, and also between the different methods of voting, as between a vote by division and a vote by yeas and nays, as after the yeas and nays are ordered and before the roll call begins (V, 5366). But after the roll call begins it may not be interrupted (V, 6053).

Orders of the day take place of all other questions, except for adjournment—that is to say, the question which is the subject of an order is made a privileged one, *pro hac vice*. The order is a repeal of the general rule as to this special case. When any Member moves, therefore, for the order of the day to be read, no further debate is permitted on the question which was before the House; for if the debate might proceed it might continue through the day and defeat the order. This motion, to entitle it to precedence, must be for the orders generally, and not for any particular one; and if it be carried on the question, “Whether the House will now proceed to the orders of the day?” they must be read and proceeded on in the course in which they stand, 2 *Hats.*, 83; for priority of order gives priority of right, which can not be taken away but by another special order.

“Orders of the day,” in the technical sense, have disappeared from the practice of the House (IV, 3057) although in one of the rules a mention of them has survived (Rule XXIV, § 1). “Special orders,” which are used occasionally for bringing up matters not regularly in order, are based on a theory entirely different from that of the orders of the day, which were a part of the regular and daily order of business (IV, 3152).

§§ 434-436.

After these there are other privileged questions, which will require considerable explanation.

§ 434. Jefferson's discussion of certain privileged motions.

It is proper that every parliamentary assembly should have certain forms of questions, so adapted as to enable them fitly to dispose of every proposition which can be made to them. Such are: 1. The previous question. 2. To postpone indefinitely. 3. To adjourn a question to a definite day. 4. To lie on the table. 5. To commit. 6. To amend. The proper occasion for each of these questions should be understood.

The House of Representatives by Rule XVI, § 4, has established the priority and other conditions of motions of this kind.

1. When a proposition is moved which it is useless or inexpedient now to express or discuss, the previous question has been introduced for suppressing for that time the motion and its discussion. *3 Hats., 188, 189.*

§ 435. Obsolete use of the previous question.

The previous question of the parliamentary law has been changed by the House of Representatives into an instrument of entirely different use (V, 5445; Rule XVII).

2. But as the previous question gets rid of it only for that day, and the same proposition may recur the next day, if they wish to suppress it for the whole of that session, they postpone it indefinitely. *3 Hats., 183.* This quashes the proposition for that session, as an indefi-

§ 436. The motion to postpone indefinitely.

nite adjournment is a dissolution, or the continuance of a suit *sine die* is a discontinuance of it.

As already explained, in the House of Representatives the previous question is no longer used as a method of postponement (V, 5445). The House uses the motion to postpone indefinitely, and in Rule XVI, § 4, and the practice thereunder has defined the nature and use of the motion.

3. When a motion is made which it will be proper to act on, but information is wanted, or something more pressing claims the present time, the question or debate is adjourned to such day within the session as will answer the views of the House. 2 *Hats.*, 81. And those who have spoken before may not speak again when the adjourned debate is resumed. 2 *Hats.*, 73. Sometimes, however, this has been abusively used by adjourning it to a day beyond the session, to get rid of it altogether, as would be done by an indefinite postponement.

The House of Representatives does not use the motion to adjourn a debate. But it accomplishes the purposes of such a procedure by the motion to postpone to a day certain, which it applies, not to a debate, but to the bill or other proposition before the House. Of course, if a bill which is under debate is postponed, the effect is to postpone the debate. The conditions and use of the motion are treated under Rule XVI, § 4.

4. When the House has something else which claims its present attention, but would be willing to reserve in their power to take up a proposition whenever it shall suit them, they order it to lie on their table. It may then be called for at any time.

§ 437. Postponement to a day certain.

§ 438. Motion to lay on the table.

§§ 439, 440.

This is the use of the motion to lay on the table which is established in general parliamentary law, and was followed in the early practice of the House of Representatives. But by an interesting evolution in the House the motion has now come to serve an entirely new purpose, being used for the final, adverse disposition of a matter (Rule XVI, § 4; V, 5389). And a matter once laid on the table may be taken therefrom only by suspension of the rules (V, 6288) or similar process, unless it be a matter of privilege (V, 5438, 5439).

5. If the proposition will want more amendment and digestion than the formalities of the House will conveniently admit, they refer it to a committee.

§ 439. Delegation of consideration to committees.

6. But if the proposition be well digested, and may need but few and simple amendments, and especially if these be of leading consequence, they then proceed to consider and amend it themselves.

In the House of Representatives it is a general rule that all business goes to committees before receiving consideration in the House itself. Occasionally a question of privilege or a minor matter of business is presented and considered at once by the House.

The Senate, in their practice, vary from this regular gradation of forms. Their practice comparatively with that of Parliament stands thus:

§ 440. Privileged motions in the Senate and in Parliament.

FOR THE PARLIAMENTARY: THE SENATE USES:

Postponement indefinite,	Postponement to a day beyond the session.
Adjournment,	Postponement to a day within the session.
Lying on table,	{Postponement indefinite. {Lying on the table.

In their eighth rule, therefore, which declares that while a question is before the Senate no motion shall be received, unless it be for the previous question, or to postpone, commit, or amend the main question, the term postponement must be understood according to their broad use of it, and not in its parliamentary sense. Their rule, then, establishes as privileged questions the previous question, postponement, commitment, and amendment.

The House of Representatives govern these motions by Rule XVI, § 4.

But it may be asked: Have these questions any privilege among themselves? or are they so equal that the common principle of the "first moved first put" takes place among them? This will need explanation. Their competitions may be as follows:

- | | | |
|-----------------------------------|---|--|
| 1. Previous question and postpone | } | In the first, second, and third classes, and the first member of the fourth class, the rule "first moved first put" takes place. |
| commit | | |
| amend | | |
| 2. Postpone and previous question | } | |
| commit | | |
| amend | | |
| 3. Commit and previous question | } | |
| postpone | | |
| amend | | |
| 4. Amend and previous question | } | |
| postpone | | |
| commit | | |

In the first class, where the previous question is first moved, the effect is peculiar; for it not only prevents the after motion to postpone or commit from being put to question before it, but also from being put after it; for if the previous question be decided affirmatively, to wit, that the main question shall *now* be put, it would of course be against the decision to postpone or commit; and if it be decided negatively, to wit, that the main question shall not now be put, this puts the House out of possession of the main question, and consequently there is nothing before them to postpone or commit. So that neither voting for nor against the previous question will enable the advocates for postponing or committing to get at their object. Whether it may be amended shall be examined hereafter.

Rule XVI, § 4, of the House of Representatives renders these provisions as to priority of motions obsolete. The entire change in the character of the previous question also renders obsolete the discussion of its relations to other motions.

Second class. If postponement be decided affirmatively, the proposition is removed from before the House, and consequently there is no ground for the previous question, commitment or amendment; but if decided negatively (that it shall not be postponed), the main question may then be suppressed by the previous question, or may be committed, or amended.

§ 442. General principles of priority of motions.

The previous question is used now for bringing a vote on the main question and not for suppressing it.

The third class is subject to the same observations as the second.

The fourth class. Amendment of the main question first moved, and afterwards the previous question, the question of amendment shall be first put.

In present practice of the House the question on the previous question would be put first, and being decided affirmatively would force a vote on the amendment and then on the main question.

Amendment and postponement competing, postponement is first put, as the equivalent proposition to adjourn the main question would be in Parliament. The reason is that the question for amendment is not suppressed by postponing or adjourning the main question, but remains before the House whenever the main question is resumed; and it might be that the occasion for other urgent business might go by, and be lost by length of debate on the amendment, if the House had it not in their power to postpone the whole subject.

Amendment and commitment. The question for committing, though last moved shall be first put; because, in truth, it facilitates and befriends the motion to amend. *Scobell* is express: "On motion to amend a bill, anyone may notwithstanding move to commit it, and the question for commitment shall be first put." *Scob.*, 46.

These principles of priority of privileged motions are recognized in the House of Representatives, and are provided for by Rule XVI, § 4.

§§ 443, 444.

We have hitherto considered the case of two or more of the privileged questions contending for privilege between themselves, when both are moved on the original or main question; but now let us suppose one of them to be moved, not on the original primary question, but on the secondary one, *e. g.*:

§ 443. Application of the previous question to debatable secondary and privileged motions.

Suppose a motion to postpone, commit, or amend the main question, and that it be moved to suppress that motion by putting a previous question on it. This is not allowed, because it would embarrass questions too much to allow them to be piled on one another several stories high; and the same result may be had in a more simple way—by deciding against the postponement, commitment, or amendment. *2 Hats., 81, 2, 3, 4.*

While the general principle that one secondary or privileged motion should not be applied to another is generally recognized in the House of Representatives, yet the entire change in the nature of the previous question (V, 5445) from a means of postponing a matter to a means of compelling an immediate vote, makes obsolete the parliamentary rule. For as the motions to postpone, commit, and amend, are all debatable, the modern previous question of course applies to them (Rule XVII, § 1).

Suppose a motion for the previous question, or commitment or amendment of the main question, and that it be then moved to postpone the motion for the previous question, or for commitment or amendment of the main question. 1. It would be absurd to postpone the previous question, commitment, or amendment,

§ 444. Motion to postpone not applicable to other secondary motions.

alone, and thus separate the appendage from its principal; yet it must be postponed separately from its original, if at all; because the eighth rule of the Senate says that when a main question is before the House no motion shall be received but to commit, amend, or pre-question the original question, which is the parliamentary doctrine also. Therefore the motion to postpone the secondary motion for the previous question, or for committing or amending, can not be received. 2. This is a piling of questions one on another; which, to avoid embarrassment, is not allowed. 3. The same result may be had more simply by voting against the previous question, commitment, or amendment.

Suppose a commitment moved of a motion for the previous question, or to postpone or amend. The first, second, and third reasons, before stated, all hold good against this.

The principles of this paragraph are in harmony with the practice of the House of Representatives, which provides further that a motion to suspend the rules may not be postponed (V, 5322).

Suppose an amendment moved to a motion for the previous question. Answer: The previous question can not be amended. Parliamentary usage, as well as the ninth rule of the Senate, has fixed its form to be, "Shall the main question be now put?"—i. e., at this instant; and as the present instant is but one, it can admit of no modification. To change it to to-morrow,

§ 445. The motion
to amend not
applicable to the
previous question.

§§ 446, 447.

or any other moment, is without example and without utility. * * *

Although the nature of the previous question has entirely changed, yet the principle of the parliamentary law applies to the new form.

* * * But suppose a motion to amend a motion

§ 446. Motion to amend applicable to motions to postpone or refer.

for postponement, as to one day instead of another, or to a special instead of an indefinite time. The useful character

of amendment gives it a privilege of attaching itself to a secondary and privileged motion: that is, we may amend a postponement of a main question. So, we may amend a commitment of a main question, as by adding, for example, "with instructions to inquire," &c. * * *

This principle is recognized in the practice of the House of Representatives (V, 5521).

* * * In like manner, if an amendment be

§ 447. Amendment in the third degree not in order.

moved to an amendment, it is admitted; but it would not be admitted in another degree, to wit, to amend an amendment

to an amendment of a main question. This would lead to too much embarrassment. The line must be drawn somewhere, and usage has drawn it after the amendment to the amendment. The same result must be sought by deciding against the amendment to the amendment, and then moving it again as it was wished to be amended. In this form it becomes only an amendment to an amendment.

This rule of the parliamentary law is considered fundamental in the House of Representatives (Rule XIX).

§ 448. Filling
blanks; and
amendment to
numbers.

[In filling a blank with a sum, the largest sum shall be first put to the question, by the thirteenth rule of the Senate, contrary to the rule of Parliament, which privileges the smallest sum and longest time. *5 Grey, 179; 2 Hats., 8, 83; 3 Hats., 132, 133.*] And this is considered to be not in the form of an amendment to the question, but as alternative or successive originals. In all cases of time or number, we must consider whether the larger comprehends the lesser, as in a question to what day a postponement shall be, the number of a committee, amount of a fine, term of an imprisonment, term of irredeemability of a loan, or the terminus in quem in any other case; then the question must begin a maximo. Or whether the lesser includes the greater, as in questions on the limitation of the rate of interest, on what day the session shall be closed by adjournment, on what day the next shall commence, when an act shall commence or the terminus a quo in any other case where the question must begin a minimo; the object being not to begin at that extreme which, and more, being within every man's wish, no one could negative it, and yet, if he should vote in the affirmative, every question for more would be precluded; but at that extreme which would unite few, and then to advance or recede till you get to a number which will unite a bare majority. *3 Grey, 376, 384, 385.* "The fair question in this case is not that to which, and more, all will agree, but

§§ 449, 450.

whether there shall be addition to the question.”
1 Grey, 365.

The Thirteenth Rule of the Senate has been dropped. The House of Representatives has no rule on the subject other than this provision of the parliamentary law. It is very rare for the House to fill blanks for numbers. When a number is to be changed by amendment, the practice of the House permits to be pending a second number as an amendment, a third as an amendment to the amendment, a fourth as a substitute, and a fifth as an amendment to the substitute.

Another exception to the rule of priority is when a motion has been made to strike out, or agree to, a paragraph. Motions to amend it are to be put to the question before a vote is taken on striking out or agreeing to the whole paragraph.

§ 449. Priority of amendments over motions to strike out or agree.

In the House of Representatives the principle that a text should be perfected before a question is taken on striking it out, and that an amendment should be perfected before agreeing to it, is well established. But in considering bills, even by paragraphs, the House does not agree to the paragraphs severally; but after amending one passes to the next, and the question on agreeing is taken only on the whole bill by the several votes on engrossment and passage.

But there are several questions which, being incidental to every one, will take place of every one, privileged or not; to wit, a question of order arising out of any other question must be decided before that question. *2 Hats., 88.*

§ 450. Incidental questions, like points of order, which intervene during consideration of the main question.

This principle governs the procedure of the House of Representatives; but a question of order arising after a motion for the previous question must be decided without debate (Rule XVII, § 3.)

A matter of privilege arising out of any question, or from a quarrel between two Members, or any other cause, supersedes the consideration of the original question, and must be first disposed of. *2 Hats., 88.*

Rule IX of the House of Representatives and the practice there under, confirm and amplify the principles of this provision of the parliamentary law.

Reading papers relative to the question before the House. This question must be put before the principal one. *2 Hats., 88.*

This provision is applicable in the House of Representatives so far as it concerns papers other than those on which the House is called on to give a final vote. The House has treated it more fully in Rule XXX and the practice thereunder.

Leave asked to withdraw a motion. The rule of Parliament being that a motion made and seconded is in the possession of the House, and can not be withdrawn without leave, the very terms of the rule imply that leave may be given, and, consequently, may be asked and put to the question.

The House of Representatives does not vote on the withdrawal of motions; but provides by Rules XVI, § 2, and XXIII, § 5, the conditions under which a Member may of his own right withdraw a motion.

SEC. XXXIV.—THE PREVIOUS QUESTION.

When any question is before the House, any Member may move a previous question, "Whether that question (called the main question) shall now be put?" If it pass in the affirmative, then the main question is to

§§ 455, 456.

be put immediately, and no man may speak anything further to it, either to add or alter. *Memor. in Hakew., 28; 4 Grey, 27.*

The previous question being moved and seconded, the question from the Chair shall be,
 § 455. Manner of putting the previous question. "Shall the main question be now put?"
 and if the nays prevail, the main question shall not then be put.

In the modern practice of the House of Representatives the previous question is put as follows: "The gentleman from —— demands the previous question. As many as are in favor of ordering the previous question will say aye; as many as are opposed will say no" (V, 5443).

This kind of question is understood by Mr. Hatsell to have been introduced in 1604. 2
 § 456. History, use, etc., of the previous question of Parliament. *Hats., 80.* Sir Henry Vane introduced it. 2 *Grey, 113, 114; 3 Grey, 384.*
 When the question was put in this form, "Shall the main question be put?" a determination in the negative suppressed the main question during the session; but since the words "now put" are used, they exclude it for the present only; formerly, indeed, only till the present debate was over, 4 *Grey, 43*, but now for that day and no longer. 2 *Grey, 113, 114.*

Before the question "Whether the main question shall now be put?" any person might formerly have spoken to the main question, because otherwise he would be precluded from speaking to it at all. *Mem. in Hakew., 28.*

The proper occasion for the previous question is when a subject is brought forward of a delicate

nature as to high personages, &c., or the discussion of which may call forth observations which might be of injurious consequences. Then the previous question is proposed, and in the modern usage the discussion of the main question is suspended and the debate confined to the previous question. The use of it has been extended abusively to other cases, but in these it has been an embarrassing procedure. Its uses would be as well answered by other more simple parliamentary forms, and therefore it should not be favored, but restricted within as narrow limits as possible.

As explained in connection with Rule XVII, the House of Representatives has changed entirely the old use of the previous question (V, 5445).

Whether a main question may be amended after the previous question on it has been moved and seconded? *2 Hats., 88,* says, if the previous question has been moved and seconded, and also proposed from the Chair (by which he means stated by the Speaker for debate), it has been doubted whether an amendment can be admitted to the main question. He thinks it may, after the previous question moved and seconded, but not after it has been proposed from the Chair. In this case he thinks the friends to the amendment must vote that the main question be not now put, and then move their amended question, which being made new by the amendment, is no longer the same which has been just suppressed, and

§ 457. Discussion as to certain obsolete features of the previous question.

therefore may be proposed as a new one. But this proceeding certainly endangers the main question by dividing its friends, some of whom may choose it unamended rather than lose it altogether, while others of them may vote, as Hatsell advises, that the main question be not now put, with a view to move it again in an amended form. The enemies of the main question, by this maneuver to the previous question, get the enemies to the amendment added to them on the first vote, and throw the friends of the main question under the embarrassment of rallying again as they can. To support this opinion, too, he makes the deciding circumstance, whether an amendment may or may not be made, to be, that the previous question has been proposed from the Chair. But, as the rule is that the House is in possession of a question as soon as it is moved and seconded, it can not be more than possessed of it by its being also proposed from the Chair. It may be said, indeed, that the object of the previous question being to get rid of a question, which it is not expedient should be discussed, this object may be defeated by moving to amend; and in the discussion of that motion, involving the subject of the main question. But so may the object of the previous question be defeated by moving the amended question, as Mr. Hatsell proposes, after the decision against putting the original question. He acknowledges, too, that the practice has been to admit pre-

vious amendments, and only cites a few late instances to the contrary. On the whole, I should think it best to decide it *ab inconvenienti*, to wit: Which is most inconvenient, to put it in the power of one side of the House to defeat a proposition by hastily moving the previous question and thus forcing the main question to be put unamended, or to put it in the power of the other side to force on, incidentally at least, a discussion which would be better avoided? Perhaps the last is the least inconvenience, inasmuch as the Speaker, by confining the discussion rigorously to the amendment only, may prevent their going into the main question; and inasmuch also as so great a proportion of the cases in which the previous question is called for are fair and proper subjects of public discussion and ought not to be obstructed by a formality introduced for questions of a peculiar character.

This discussion has no bearing on the modern uses of the previous question.

SEC. XXXV.—AMENDMENTS.

§ 458. Right of the Member who has spoken to the main question to speak to an amendment.

On an amendment being moved, a Member who had spoken to the main question may speak again to the amendment. *Scob., 23.*

This parliamentary rule is of effect in the House of Representatives, where the hour rule of debate (Rule XIV, § 2) has been in force for many years. A Member who has spoken an hour to the main question, may speak another hour to an amendment (V, 4994).

§ 459. The Speaker not to decide as to consistency of a proposed amendment with one already agreed to.

If an amendment be proposed inconsistent with one already agreed to, it is a fit ground for its rejection by the House, but not within the competence of the Speaker to suppress as if it were against order. For were he permitted to draw questions of consistence within the vortex or order, he might usurp a negative on important modifications, and suppress, instead of subserving, the legislative will.

The practice of the House of Representatives follows and extends the principle set forth by Jefferson. Thus it has been held that the fact that a proposed amendment is inconsistent with the text or embodies a proposition already voted (II, 1328-1336), or would in effect change a provision of text to which both Houses have agreed (II, 1335; V, 6183-6185), or is contained in substance in a later portion of the bill (II, 1327), is a matter to be passed on by the House rather than by the Speaker. It is for the House rather than the Speaker to decide on the legislative effect of a proposition (II, 1323, 1324), and the change of a single word in the text of a proposition may be sufficient to prevent the Speaker ruling it out of order as one already disposed of by the House (II, 1274). This principle has been the subject of conflicting decisions, from which may be deduced the rule that the Chair may rule out the proposition unless it presents substantially a different proposition. (Mar. 18, 1914, p. 5068; May 18, 1916, p. 8273; Oct. 3, 1918, p. 11098; June 9, 1921, p. 2338; Aug. 3, 1921, p. 4620; June 28, 1922, p. 9637; Jan. 23, 1923, p. 2281; Jan. 31, 1923, p. 2785; Mar. 10, 1924, p. 3923.)

Amendments may be made so as totally to alter the nature of the proposition; and it is a way of getting rid of a proposition by making it bear a sense different from what it was intended by the movers, so that they vote against it themselves. *2 Hats.*, 79; 4, 82, 84. A new bill may be ingrafted, by way of amendment, on the words, "Be it enacted," etc. *1 Grey*, 190, 192.

This was the rule of Parliament, which did not require an amendment to be germane (V, 5802, 5825). But the House of Representatives, from

its first organization, has by rule required that an amendment should be germane to the pending proposition (Rule XVI, § 7).

If it be proposed to amend by leaving out certain words, it may be moved, as an amendment to this amendment, to leave out a part of the words of the amendment, which is equivalent to leaving them in the bill. 2 *Hats.*, 80, 9. The parliamentary question is, always, whether the words shall stand part of the bill.

§ 461. The amendment to strike out certain words of a bill.

In the House of Representatives the question herein described is never put as in Parliament, but is always, whether the words shall be stricken out; and if there is a desire that certain of the words included in the amendment remain part of the bill, it is expressed, not by amending the amendment, but by a preferential motion to strike from the specified words a portion of them. If this is carried the portion thus removed remains a part of the bill and the vote recurs on striking out the residue (V, 5770). And when a motion to strike out certain words is disagreed to, it is in order to move to strike out a portion of those words (V, 5769); but when it is proposed to strike out certain words in a paragraph, it is not in order to amend those words by including with them other words of the paragraph (V, 5768). It is in order to insert by way of amendment a paragraph similar (but not actually identical) to one already stricken out by amendment (V, 5760).

When it is proposed to amend by inserting a paragraph, or part of one, the friends of the paragraph may make it as perfect as they can by amendments before the question is put for inserting it. If it be received, it cannot be amended afterward in the same stage, because the House has, on a vote, agreed to it in that form. In like manner, if it is proposed to amend by striking out a paragraph, the friends of the paragraph are first to make it as perfect as they can by amendments, before the question is put for striking it out. If on the question it be retained, it cannot be amended

§ 462. Principles as to perfecting before inserting or striking out.

§ 463.

afterward, because a vote against striking out is equivalent to a vote agreeing to it in that form.

The principles herein set forth are recognized as in force in the House of Representatives, with the exception that Rule XVI, § 7, specifically provides that "a motion to strike out being lost shall neither preclude amendment nor a motion to strike out and insert." But after an amendment to insert has been agreed to, the matter inserted ordinarily may not then be amended (V, 5761-5763) in any way that would change its text; but an amendment may be added at the end (V, 5759, 5764, 5765). When it is proposed to perfect a paragraph the motions to insert or strike out, if already pending, must remain in abeyance until the amendments to perfect have been moved and voted on (V, 5758); and while amendments are pending to a section a motion to strike it out may not be offered (V, 5771). In the peculiar situation wherein, when a motion to strike out a paragraph is pending, the paragraph is perfected by a substitute amendment, the pending motion to strike out must fall, since it would not be in order to strike out exactly what it has just been voted to insert (V, 5792) (Chairman Walsh, Aug. 19, 1921, p. 5284).

§ 463. Reading the motion and putting the question on a motion to strike out and insert.

When it is moved to amend by striking out certain words and inserting others, the manner of stating the question is first to read the whole passage to be amended as it stands at present, then the words proposed to be struck out, next those to be inserted, and lastly the whole passage as it will be when amended. And the question, if desired, is then to be divided, and put first on striking out. If carried, it is next on inserting the words proposed. If that be lost, it may be moved to insert others. 2 *Hats.*, 80, 7.

Rule XVI, § 7, of the House of Representatives provides specifically that the motion to strike out and insert shall not be divided. Otherwise, as to the manner of stating the question, it is usual for the clerk to read only the words to be stricken out and the words to be inserted. Usually this is sufficient, as the Members may have before them printed copies of the bill under consideration.

A motion is made to amend by striking out certain words and inserting others in their place, which is negatived. Then it is moved to strike out the same words, and to insert others of a tenor entirely different from those first proposed. It is negatived. Then it is moved to strike out the same words and insert nothing, which is agreed to. All this is admissible, because to strike out and insert A is one proposition. To strike out and insert B is a different proposition. And to strike out and insert nothing is still different. And the rejection of one proposition does not preclude the offering a different one. Nor would it change the case were the first motion divided by putting the question first on striking out, and that negatived; for, as putting the whole motion to the question at once would not have precluded, the putting the half of it cannot do it.

As to Jefferson's supposition that the principle would hold good in case of division of the motion to strike out and insert it is not necessary to inquire, since Rule XVI, § 7, of the House of Representatives forbids division of the motion. In a footnote Jefferson expressed himself as follows: "In the case of a division of the question, and a decision against striking out, I advance doubtingly the opinion here expressed. I find no authority either way, and I know it may be viewed under a different aspect. It may be thought that, having decided separately not to strike out the passage, the same question for striking out cannot be put over again, though with a view to a different insertion. Still I think it more reasonable and convenient to consider the striking out and insertion as forming one proposition, but should readily yield to any evidence that the contrary is the practice in Parliament."

The principle set forth by Jefferson as to repetition of the motion to strike out prevails in the House of Representatives, where it has been held in order, after the failure of a motion to strike out certain words, to move to strike out a portion of those words (V, 5769). When a bill is under consideration by paragraphs, a motion to strike out applies only to the paragraph under consideration (V, 5774).

§ 464. Conditions of repetition of motions to strike out and insert.

§ 465. Application of the motion to strike out.

§§ 466-468.

But if it had been carried affirmatively to strike out the words and to insert A, it could not afterward be permitted to strike out A and insert B. The mover of B should have notified, while the insertion of A was under debate, that he would move to insert B; in which case those who preferred it would join in rejecting A.

This principle controls the practice of the House of Representatives.

After A is inserted, however, it may be moved to strike out a portion of the original paragraph, comprehending A, provided the coherence to be struck out be so substantial as to make this effectively a different proposition; for then it is resolved into the common case of striking out a paragraph after amending it. Nor does anything forbid a new insertion, instead of A and its coherence.

The principles of this paragraph have been followed in the House of Representatives (V, 5763), but in one case wherein words embodying a distinct substantive proposition had been agreed to as an amendment to a paragraph, it was held not in order to strike out a part of the words of this amendment with other words of the paragraph (V. 5766).

In Senate, January 25, 1798, a motion to postpone until the second Tuesday in February some amendments proposed to the Constitution; the words "until the second Tuesday in February" were struck out by way of amendment. Then it was moved to add, "until the first day of June." Objected that it was not in order, as the question should be first put on the longest time;

§ 466. Effect of affirmative vote on motion to strike out and insert.

§ 467. Conditions of striking out an amendment already agreed to.

§ 468. Amendments filling blanks as to time.

therefore, after a shorter time decided against, a longer cannot be put to question. It was answered that this rule takes place only in filling blanks for time. But when a specific time stands part of a motion, that may be struck out as well as any other part of the motion; and when struck out, a motion may be received to insert any other. In fact, it is not until they are struck out, and a blank for the time thereby produced, that the rule can begin to operate, by receiving all the propositions for different times, and putting the questions successively on the longest. Otherwise it would be in the power of the mover by inserting originally a short time, to preclude the possibility of a longer, for till the short time is struck out, you cannot insert a longer; and if, after it is struck out, you cannot do it, then it cannot be done at all. Suppose the first motion had been made to amend by striking out "the second Tuesday in February," and inserting instead thereof "the first of June," it would have been regular, then, to divide the question, by proposing first the question to strike out, and then that to insert. Now, this is precisely the effect of the present proceeding; only, instead of one motion and two questions, there are two motions and two questions to effect it—the motion being divided as well as the question.

The motion to strike out and insert may not be divided in the House of Representatives (Rule XVI, § 7).

§§ 469-472.

When the matter contained in two bills might be better put into one, the manner is to reject the one and incorporate its matter into another bill by way of amendment. So if the matter of one bill would be better distributed into two, any part may be struck out by way of amendment, and put into a new bill. * * *

In the modern practice of the House of Representatives each bill comes before the House by itself; and if it were proposed to join one bill to another it would be done by offering the text of the one as an amendment to the other, without disturbing the first bill in its place on the calendar. Where it is proposed to divide a bill, the object is accomplished in the House of Representatives by moving to recommit with instructions to the committee to report two bills (V, 5527, 5528).

* * * If a section is to be transposed, a question must be put on striking it out where it stands and another for inserting it in the place desired.

§ 470. Transposition of the sections of a bill.

This principle is followed in the practice of the House of Representatives (V, 5775, 5776):

A bill passed by the one House with blanks. These may be filled up by the other by way of amendments, returned to the first as such, and passed. *3 Hats., 83.*

§ 471. Filling blanks left by the other House.

The number prefixed to the section of a bill, being merely a marginal indication, and no part of the text of the bill, the Clerk regulates that—the House or committee is only to amend the text.

§ 472. Clerk amends the section numbers of a bill.

SEC. XXXVI.—DIVISION OF THE QUESTION.

If a question contain more parts than one, it may be divided into two or more questions. § 473. Parliamentary law for division of the question. *Mem. in Hakew., 29.* But not as the right of an individual member, but with the consent of the House: For who is to decide whether a question is complicated or not—where it is complicated—into how many propositions it may be divided? The fact is, that the only mode of separating a complicated question is by moving amendments to it; and these must be decided by the House, on a question, unless the House orders it to be divided; as, on the question, December 2, 1640, making void the election of the knights for Worcester, on a motion it was resolved to make two questions of it, to wit, one on each knight. *2 Hats., 85, 86.* So, wherever there are several names in a question, they may be divided and put one by one. *9 Grey, 444.* So, 1729, April 17, on an objection that a question was complicated, it was separated by amendment. *2 Hats., 79.*

* The House of Representatives, by Rule XVI, § 6, and the practice thereunder, has established a procedure differing materially from that above set forth.

The soundness of these observations will be evident from the embarrassments produced by the XVIIIth rule of the Senate, which § 474. Jefferson's discussion of division of the question. says, "if the question in debate contains several points, any member may have the same divided."

1798, May 30, the alien bill in quasi-committee. To a section and proviso in the original, had been added two new provisos by way of amendment. On a motion to strike out the section as amended, the question was desired to be divided. To do this it must be put first on striking out either the former proviso, or some distinct member of the section. But when nothing remains but the last member of the section and the provisos, they cannot be divided so as to put the last member to question by itself, for the provisos might thus be left standing alone as exceptions to a rule when the rule is taken away; or the new provisos might be left to a second question, after having been decided on once before at the same reading, which is contrary to rule. But the question must be on striking out the last member of the section as amended. This sweeps away the exceptions with the rule, and relieves from inconsistency. A question to be divisible must comprehend points so distinct and entire that one of them being taken away, the other may stand entire. But a proviso or exception, without an enacting clause, does not contain an entire point or proposition.

May 31.—The same bill being before the Senate. There was a proviso that the bill should not extend—
1. To any foreign minister; nor, 2. To any person to whom the President should give a passport; nor, 3. To any alien merchant conforming himself to such

regulations as the President shall prescribe; and a division of the question into its simplest elements was called for. It was divided into four parts, the 4th taking in the words "conforming himself," &c. It was objected that the words "any alien merchant," could not be separated from their modifying words, "conforming," &c., because these words, if left by themselves, contain no substantive idea, will make no sense. But admitting that the divisions of a paragraph into separate questions must be so made as that each part may stand by itself, yet the House having, on the question, retained the two first divisions, the words "any alien merchant" may be struck out, and their modifying words will then attach themselves to the preceding description of persons, and become a modification of that description.

When a question is divided, after the question on the 1st member, the 2d is open to debate and amendment; because it is a known rule that a person may rise and speak at any time before the question has been completely decided, by putting the negative as well as affirmative side. But the question is not completely put when the vote has been taken on the first member only. One-half of the question, both affirmative and negative, remains still to be put. See *Execut. Jour.*, June 25, 1795. The same decision by President Adams.

§ 475. Division of question as related to debate or amendment.

SEC. XXXVII.—COEXISTING QUESTIONS.

It may be asked whether the House can be in session of two motions or propositions at the same time? so that, one of them being decided, the other goes to question without being moved anew? The answer must be special. When a question is interrupted by a vote of adjournment, it is thereby removed from before the House, and does not stand *ipso facto* before them at their next meeting, but must come forward in the usual way. So, when it is interrupted by the order of the day. Such other privileged questions also as dispose of the main question (e. g., the previous question, postponement, or commitment), remove it from before the House. But it is only suspended by a motion to amend, to withdraw, to read papers, or by a question of order or privilege, and stands again before the House when these are decided. None but the class of privileged questions can be brought forward while there is another question before the House, the rule being that when a motion has been made and seconded, no other can be received except it be a privileged one.

The principles of this provision must, of course, be viewed in the light of a more highly perfected order of business than existed in Jefferson's time (Rule XXIV). The motion to withdraw is not known in the practice of the House, not being among the motions enumerated in Rule XVI, § 4.

SEC. XXXVIII.—EQUIVALENT QUESTIONS.

If, on a question for rejection, a bill be retained, it passes, of course, to its next reading. *Hakew.*, 141; *Scob.*, 42. And a question for a second reading, determined negatively, is a rejection without further question. 4 *Grey*, 149. And see *Elsynge's Memor.*, 42, in what cases questions are to be taken for rejection.

§ 477. Former practice as to rejection and second reading of bills.

The House of Representatives has abandoned the question "Shall the bill be rejected?" (IV, 3391), and the question is now taken in accordance with Rule XXI, § 1. A vote is not taken on the second reading, the first test coming in the modern practice of the House on the engrossment and third reading.

Where questions are perfectly equivalent, so that the negative of the one amounts to the affirmative of the other, and leaves no other alternative, the decision of the one concludes necessarily the other. 4 *Grey*, 157. Thus the negative of striking out amounts to the affirmative of agreeing; and therefore to put a question on agreeing after that on striking out, would be to put the same question in effect twice over. Not so in questions of amendments between the two Houses. A motion to recede being negatived, does not amount to a positive vote to insist, because there is another alternative, to wit, to adhere.

§ 478. Equivalent questions in general.

The principles set forth in this paragraph are recognized by the practice of the House of Representatives; but Jefferson's use of the motion to strike out as an illustration is no longer justified, since the practice of the House

§§ 479, 480.

under Rule XVI, § 7, does not permit the negative of the motion to strike out to be equivalent to the affirmative of agreeing.

A bill originating in one House is passed by the other with an amendment. A motion in the originating House to agree to the amendment is negatived. Does there result from this a vote of disagreement, or must the question on disagreement be expressly voted? The question respecting amendments from another House are—1st, to agree; 2d, disagree; 3d, recede; 4th, insist; 5th, adhere.

§ 479. Equivalent questions on amendments between the Houses.

The rejection of a motion to concur in a Senate amendment is equivalent to disagreeing, and the latter motion is not put. (Speaker Clark, June 21, 1911, 62d Cong., 1st sess., Cong. Rec., p. 2434).

In the House of Representatives and the Senate the order of precedence of motions is as given in the Parliamentary law, and the motions take precedence in that order without regard to the order in which they are moved (V, 6270, 6324). But a motion to amend an amendment of the other House has precedence of the motion to agree or disagree (V, 6164, 6169–6171). But it has been held that when the previous question has been demanded or ordered on a motion to concur, a motion to amend is not in order (V, 5488). The motion to refer also takes precedence of the motions to agree or disagree (V, 6172–6174), but the demanding or ordering of the previous question does not prevent a motion to refer (V, 5575).

1st. To agree; 2d. To disagree.—Either of these concludes the other necessarily, for the positive of either is exactly the equivalent to the negative of the other, and no other alternative remains. On either motion amendments to the amendment may be proposed; e. g., if it be moved to disagree, those who are for the amendment have a right to propose amendments, and to make it as perfect as they can, before the question of disagreeing is put.

§ 480. The motions to agree and disagree as related to motions to amend.

3d. To recede.—You may then either insist or adhere.

§ 481. No equivalent questions on motions to recede, insist, and adhere.

4th. To insist.—You may then either recede or adhere.

5th. To adhere.—You may then either recede or insist.

Consequently the negative of these is not equivalent to a positive vote the other way. It does not raise so necessary an implication as may authorize the Secretary by inference to enter another vote; for two alternatives still remain, either of which may be adopted by the House.

In the practice of the House of Representatives the voting down of the motion to recede and concur is tantamount to insistence, but is not equivalent to adherence. (Speaker Clark, July 2, 1918, 65th Cong., 2d sess., Cong. Rec., p. 8648.)

SEC. XXXIX.—THE QUESTION.

§ 482. Putting the question.

The question is to be put first on the affirmative, and then on the negative side.

Rule I, § 5, of the House of Representatives, provides more fully for putting the question.

After the Speaker has put the affirmative part of the question, any Member who has not spoken before to the question may rise and speak before the negative be put; because it is no full question till the negative part be put. *Scob.*, 23; *2 Hats.*, 73.

§ 483. Effect of putting the question in ending debate.

But in small matters, and which are of course, such as receiving petitions, reports, withdrawing motions, reading papers, &c., the Speaker most commonly supposes the consent of the House where no objection

§ 484. Informal putting of the question.

§§ 485, 486.

is expressed, and does not give them the trouble of putting the question formally. *Scob.*, 22; 2 *Hats.*, 79, 2, 87; 5 *Grey*, 129; 9 *Grey*, 301.

SEC. XL.—BILLS, THIRD READING.

To prevent bills from being passed by surprise, the House, by a standing order, directs that they shall not be put on their passage before a fixed hour, naming one at which the house is commonly full. *Hakew.*, 153.

§ 485. Obsolete requirements as to reading and passage of bills.

The usage of the Senate is not to put bills on their passage till noon.

A bill reported and passed to the third reading, cannot on that day be read the third time and passed; because this would be to pass on two readings in the same day.

None of these restrictions is of effect in the modern practice of the House of Representatives. Rule XXI, § 1, permits a bill to be read a third time and passed on the same day, and it is in order to proceed with a bill at any time, unless the absence of a quorum be shown.

At the third reading the Clerk reads the bill and delivers it to the Speaker, who states the title, that it is the third time of reading the bill, and that the question will be whether it shall pass. Formerly the Speaker, or those who prepared a bill, prepared also a breviate or summary statement of its contents, which the Speaker read when he declared the state of the bill, at the several readings. Sometimes, how-

§ 486. Obsolete parliamentary law as to third reading.

ever, he read the bill itself, especially on its passage. *Hakew.*, 136, 137, 153; *Coke*, 22, 115. Latterly, instead of this, he, at the third reading, states the whole contents of the bill verbatim, only, instead of reading the formal parts, "Be it enacted," &c., he states that "preamble recites so and so—the 1st section enacts that, &c.; the 2d section enacts," &c.

But in the Senate of the United States, both of these formalities are dispensed with; the breviatè presenting but an imperfect view of the bill, and being capable of being made to present a false one; and the full statement being a useless waste of time, immediately after a full reading by the Clerk, and especially as every member has a printed copy in his hand.

In the House of Representatives there is no practice justifying the presentation of a breviated summary; and the procedure on third reading is definitely prescribed by Rule XXI, § 1.

A bill on the third reading is not to be committed for the matter or body thereof, but to receive some particular clause or proviso, it hath been sometimes suffered, but as a thing very unusual. *Hakew.*, 156. Thus, 27 *El.*, 1584, a bill was committed on the third reading, having been formerly committed on the second, but is declared not usual. *D'Ewes*, 337, col. 2; 414, col. 2.

§ 487. Committal
of a bill on third
reading.

In the House of Representatives it is in order to commit a bill either before or after the engrossment and third reading (V, 5562); and by Rule XVII, § 1, the House has preserved this opportunity to commit even after the previous question has been ordered.

§§ 488-490.

When an essential provision has been omitted, rather than erase the bill and render it suspicious, they add a clause on a separate paper, engrossed and called a rider, which is read and put to the question three times. *Elsynge's Memo.*, 59; 6 *Grey*, 335; 1 *Blackst.*, 183. For examples of riders, see 3 *Hats.*, 121, 122, 124, 156. Every one is at liberty to bring in a rider without asking leave. 10 *Grey*, 52.

This practice is never followed in the House of Representatives.

It is laid down, as a general rule, that amendments proposed at the second reading shall be twice read, and those proposed at the third reading thrice read; as also all amendments from the other House. *Town.*, col. 19, 23, 24, 25, 26, 27, 28.

In the practice of the House of Representatives amendments, whether offered in the House or coming from the other House, do not come under the rule requiring different readings.

It is with great and almost invincible reluctance that amendments are admitted at this reading, which occasion erasures or interlineations. Sometimes a proviso has been cut off from a bill; sometimes erased. 9 *Grey*, 513.

This is the proper stage for filling up blanks; for if filled up before, and now altered by erasure, it would be peculiarly unsafe.

In the House of Representatives bills are amended after the second reading (IV, 3392), and before the engrossment and third reading (V, 5781) but not afterwards.

§ 491. Debate in relation to the third reading.

At this reading the bill is debated afresh, and for the most part is more spoken to at this time than on any of the former readings. *Hakew., 153.*

The debate on the question whether it should be read a third time, has discovered to its friends and opponents the arguments on which each side relies, and which of these appear to have influence with the House; they have had time to meet them with new arguments, and to put their old ones into new shapes. The former vote has tried the strength of the first opinion, and furnished grounds to estimate the issue; and the question now offered for its passage is the last occasion which is ever to be offered for carrying or rejecting it.

In the House of Representatives it is usual to debate a bill before and not after the engrossment and third reading, probably because of the frequent use of the previous question, which prevents all debate after it is ordered. When the previous question is not ordered, debate may occur pending the vote on the passage.

When the debate is ended, the Speaker, holding the bill in his hand, puts the question for its passage, by saying, "Gentlemen, all you who are of opinion that this bill shall pass, say aye;" and after the answer of the ayes, "All those of the contrary opinion, say no." *Hakew., 154.*

§ 492. Putting the question on the passage of a bill.

In the House of Representatives the bill is usually in the hands of the Clerk. The Speaker states that "The question is on the passage of the bill," and puts the question in the form prescribed by Rule I, § 5.

§§ 493-495.

§ 493. Bills not altered after their passage.

After the bill is passed, there can be no further alteration of it in any point.
Hakew., 159.

This principle controls the practice of the House of Representatives, except as a bill may be changed after the votes on the passage and engrossment have been reconsidered.

SEC. XLI.—DIVISION OF THE HOUSE.

The affirmative and negative of the question having been both put and answered, the Speaker declares whether the yeas or nays have it by the sound, if he be himself satisfied, and it stands as the judgment of the House. But if he be not himself satisfied which voice is the greater, or if before any other Member comes into the House, or before any new motion made (for it is too late after that), any Member shall arise and declare himself dissatisfied with the Speaker's decision, then the Speaker is to divide the House. *Scob., 24; 2 Hats., 140.*

§ 494. Division of the House after determination by sound.

This practice is provided for in different language by Rule I, § 5.

When the House of Commons is divided, the one party goes forth, and the other remains in the House. This has made it important which go forth and which remain; because the latter gain all the indolent, the indifferent, and inattentive. Their general rule, therefore, is that those who give their vote for the preservation of the orders of the House shall stay in, and those who are for introducing any new matter

§ 495. Parliamentary provisions as to division, not applicable in the House.

or alteration, or proceeding contrary to the established course, are to go out. But this rule is subject to many exceptions and modifications. *2 Hats.*, 134; *1 Rush.*, p. 3, fol. 92; *Scob.*, 43, 52; *Co.*, 12, 116; *D'Ewes*, 505, col. 1; *Mem. in Hakew.*, 25, 29; as will appear by the following statement of who go forth:

Petition that it be received (<i>Noes</i> , 9 <i>Grey</i> , 365).....	}	Ayes.
Read.....		
Lie on the table.....	}	Noes.
Rejected after refusal to lie on table.....		
Referred to a committee, or further proceeding.....		Ayes.
Bill, that it be brought in.....	}	Ayes.
Read first or second time.....		
Engrossed or read third time.....		
Proceeding on every other stage.....		
Committed.....		
To Committee of the Whole.....		Noes.
To a select committee.....		Ayes.
Report of bill to lie on table.....		Noes.
Be <i>now</i> read.....		Ayes.
Be taken into consideration three months hence.....		30, P. J 251.
Amendments to be read a second time.. ..		Noes.
Clause offered on report of bill be read second time.....		Ayes.
For receiving a clause.....	}	334.
With amendments be engrossed.....		395.
That a bill be <i>now</i> read a third time.....		Noes. 398.
Receive a rider.....		260.
Pass.....	}	Ayes. 259.
Be printed.....		
Committees. That A take the chair.....	}	Noes. 291.
To agree to the whole or any part of report.....		
That the House do <i>now</i> resolve into committee.....		
Speaker. That he now leave the chair, after order to go into committee.....		
That he issue warrant for a new writ.....		
Member. That none be absent without leave.....		
Witness. That he be further examined.....		Ayes. 344.
Previous question.....		Noes.

§§ 496, 497.

Blanks. That they be filled with the largest sum.	} Ayes.
Amendments. That words stand part of.	
Lords. That their amendment be read a second time.	Noes.
Messenger be received.	} Ayes.
Orders of the day to be now read, if before 2 o'clock.	
If after 2 o'clock.	Noes.
Adjournment. Till the next sitting day, if before 4 o'clock. .	Ayes.
If after 4 o'clock.	Noes.
Over a sitting day (unless a previous resolution).	Ayes.
Over the 30th of January.	Noes.
For sitting on Sunday, or any other day not being a sitting) day.	Ayes.

The one party being gone forth, the Speaker names two tellers from the affirmative and two from the negative side, who first count those sitting in the House and report the number to the Speaker. Then they place themselves within the door, two on each side, and count those who went forth as they come in and report the number to the Speaker. *Mem. in Hakew., 26.*

In the House of Representatives the two tellers take their places in the entrance to the center aisle and the affirmative and the negative pass between them to be counted.

§ 496. Correction
of a vote by tellers
after the report.

A mistake in the report of the tellers
may be rectified after the report made.
2 Hats., 145, note.

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§ 497. Voting by
yeas and nays.

When it is proposed to take the vote by yeas and
nays, the President or Speaker states
that "the question is whether, e. g., the
bill shall pass—that it is proposed that the

yeas and nays shall be entered on the journal. Those, therefore, who desire it will rise." If he finds and declares that one-fifth have risen, he then states that "those who are of opinion that the bill shall pass are to answer in the affirmative; those of the contrary opinion in the negative." The Clerk then calls over the names alphabetically, notes the yea or nay of each, and gives the list to the President or Speaker, who declares the result. In the Senate if there be an equal division the Secretary calls on the Vice-President and notes his affirmative or negative, which becomes the decision of the House.

In the House of Representatives tellers are sometimes, though rarely, ordered to determine whether one-fifth join in the demand for the yeas and nays (V, 6045). Rule XV, § 1 of the House provides the method of taking the yeas and nays in the modern practice.

In the House of Commons every member must give his vote the one way or the other, *Scob.*, 24, as it is not permitted to anyone to withdraw who is in the House when the question is put, nor is anyone to be told in the division who was not in when the question was put. 2 *Hats.*, 140.

This last position is always true when the vote is by yeas and nays; where the negative as well as affirmative of the question is stated by the President at the same time, and the vote of both sides begins and proceeds *pari passu*. It is true also when the question is put in the usual way, if the negative has also been put; but if it has not, the member entering,

§§ 499, 500.

or any other member may speak, and even propose amendments, by which the debate may be opened again, and the question be greatly deferred. And as some who have answered aye may have been changed by the new arguments, the affirmative must be put over again. If, then, the member entering may, by speaking a few words, occasion a repetition of a question, it would be useless to deny it on his simple call for it.

Rule VIII, § 1, of the House of Representatives requires Members to vote; but no rule excludes from voting those not present at the putting of the question, and this requirement of the parliamentary law is not observed in the House. No attempt is made to prevent Members from withdrawing after a question is put, unless there be a question as to a quorum, when the House proceeds under Rule XV, §§ 2, 4.

While the House is telling, no Member may speak or move out of his place, for if any mistake be suspected it must be told again.
Mem. in Hakew., 26; 2 Hats., 143.

§ 499. Movements
of Members during
voting.

This rule applies in the House of Representatives on a vote by division, where the Speaker counts; but not to a vote by tellers, where the members pass between the tellers, or to a vote by yeas and nays.

If any difficulty arises in point of order during the division, the Speaker is to decide peremptorily, subject to the future censure of the House if irregular. He sometimes permits old experienced Members to assist him with their advice, which they do sitting in their seats, covered, to avoid the appearance of debate; but this

§ 500. Decisions
of points of order
during a division.

can only be with the Speaker's leave, else the division might last several hours. *2 Hats., 143.*

In the House of Representatives any Member advising the Speaker would rise and give advice standing under Rule XIV, § 1.

The voice of the majority decides; for the *lex majoris partis* is the law of all councils, elections, &c., where not otherwise expressly provided. *Hakew., 93.* But if the House be equally divided, *semper presumatur pro negante*; that is, the former law is not to be changed but a majority. *Towns., col. 134.*

§ 501. Decision by
voice of majority;
and tie votes.

The House of Representatives provides also by rule that in all cases of tie vote the question shall be lost.

The House of Representatives, however, requires a two-thirds motion to suspend the rules (Rule XXVII, § 1), on a motion to dispense with Calendar Wednesday, and to consider a special rule immediately (Rule XI, § 56), and the Constitution of the United States requires two-thirds votes for passing vetoed bills, removing political disabilities, and passing resolutions proposing amendments to the Constitution.

§ 502. Two-thirds
votes.

When from counting the House on a division it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day. *2 Hats., 126.*

§ 503. Business
suspended by the
failure of a
quorum.

In the House of Representatives the failure of a quorum necessitates the suspension of even the most highly privileged business (IV, 2934), and debate as well (IV, 2935-2949); and there must be a quorum before the House may proceed (IV, 2952, 2953). Even in the closing hours of a Congress business has been stopped by the failure of a quorum (V, 6309).

§§ 504-506.

1606, May 1, on a question whether a Member having said yea may afterwards sit and change his opinion, a precedent was remembered by the Speaker, of Mr. Morris, attorney of the wards, in *39 Eliz.*, who in like case changed his opinion. *Mem. in Hakew., 27.*

The House of Representatives is governed in this respect by the practice under Rule XV, § 1.

SEC. XLII.—TITLES.

After the bill has passed, and not before, the title may be amended, and is to be fixed by a question; and the bill is then sent to the other House.

§ 505. Amendments to the title of a bill.

The House of Representatives by Rule XIX embodies this principle with an additional provision as to debate.

SEC. XLIII.—RECONSIDERATION.

1798, Jan. A bill on its second reading being amended, and on the question whether it shall be read a third time negatived, was restored by a decision to reconsider that question. Here the votes of negative and reconsideration, like positive and negative quantities in equation, destroy one another, and are as if they were expunged from the journals. Consequently the bill is open for amendment, just so far as it was the moment preceding the question for the third reading; that is to say, all parts of the bill are open for amendment except those on which votes have been already

§ 506. Early Senate practice as to reconsideration.

taken in its present stage. So, also, it may be recommended.

The rule permitting a reconsideration of a question affixing to it no limitation of time or circumstance, it may be asked whether there is no limitation? If, after the vote, the paper on which it is passed has been parted with, there can be no reconsideration, as if a vote has been for the passage of a bill and the bill has been sent to the other House. But where the paper remains, as on a bill rejected, when or under what circumstances does it cease to be susceptible of reconsideration? This remains to be settled, unless a sense that the right of reconsideration is a right to waste the time of the House in repeated agitations of the same question, so that it shall never know when a question is done with, should induce them to reform this anomalous proceeding.

The House of Representatives provides for reconsideration by Rule XVIII, § 1.

In Parliament a question once carried can not be questioned again at the same session, but must stand as the judgment of the House. *Towns., col. 67; Mem. in*

§ 507. Parliamentary law as to reconsideration.

Hakew., 33.

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§ 508. A bill once rejected not to be brought up again at the same session.

And a bill once rejected, another of the same substance can not be brought in again the same session. *Hakew., 158; 6 Grey, 392.* But this does not extend to prevent putting the same question in different stages of a bill, because every stage

§ 509.

of a bill submits the whole and every part of it to the opinion of the House as open for amendment, either by insertion or omission, though the same amendment has been accepted or rejected in a former stage. So in reports of committees, *e. g.*, report of an address, the same question is before the House, and open for free discussion. *Towns.*, col. 26; *2 Hats.*, 98, 100, 101. So orders of the House or instructions to committees may be discharged. So a bill, begun in one House and sent to the other and there rejected, may be renewed again in that other, passed, and sent back. *Ib.*, 92; *3 Hats.*, 161. Or if, instead of being rejected, they read it once and lay it aside or amend it and put it off a month, they may order in another to the same effect, with the same or a different title. *Hakew.*, 97, 98.

In the House of Representatives, with its rule for reconsideration, there is rarely, if ever, an attempt to bring forward a bill once rejected at the same session. An instance occurred in 1856, however (IV, 3384), and on March 9, 1910, page 2966, the House declined to consider a bill brought forward after a rejection.

Divers expedients are used to correct the effects of this rule, as, by passing an explanatory act, if anything has been omitted or ill expressed, *3 Hats.*, 278, or an act to enforce and make more effectual an act, &c., or to rectify mistakes in an act, &c., or a committee on one bill may be instructed to receive a clause to rectify the mistakes of another. Thus, June 24, 1685, a

§ 509. Expedients
for changing the
effect of bills once
passed.

clause was inserted in a bill for rectifying a mistake committed by a clerk in engrossing a bill of supply. *2 Hats., 194, 6.* Or the session may be closed for one, two, three, or more days and a new one commenced. But then all matters depending must be finished, or they fall, and are to begin de novo. *2 Hats., 94, 98.* Or a part of the subject may be taken up by another bill or taken up in a different way. *6 Grey, 304, 316.*

And in cases of the last magnitude this rule has not been so strictly and verbally observed as to stop indispensable proceedings altogether. *2 Hats., 92, 98.* Thus when the address on the preliminaries of peace in 1782 had been lost by a majority of one, on account of the importance of the question and smallness of the majority, the same question in substance, though with some words not in the first, and which might change the opinion of some Members, was brought on again and carried, as the motives for it were thought to outweigh the objection of form. *2 Hats., 99, 100.*

A second bill may be passed to continue an act of the same session or to enlarge the time limited for its execution. *2 Hats., 95, 98.* This is not in contradiction to the first act.

§ 510. Exceptions to the rule against bringing up a matter once rejected.

§ 511. Passage of supplementary bills.

The House of Representatives has by a joint resolution corrected an error in a bill that had gone to the President (IV, 3519).

SEC. XLIV.—BILLS SENT TO THE OTHER HOUSE.

§ 512. Laying on
the table bills from
the other House.

A bill from the other House is sometimes ordered to lie on the table. *2 Hats., 97.*

This principle is recognized in the practice of the House of Representatives, both as to Senate bills (IV, 3418, 3419; V, 5437), and as to House bills returned with Senate amendments (V, 5424, 6201-6203), but the motion does not take precedence over the motion to recede and concur. (Speaker Longworth, Jan. 24, 1927, 69th Cong., 2d sess., p. 2165.)

§ 513. Requests
for information
from the other
House.

When bills passed in one House and sent to the other are grounded on special facts requiring proof, it is usual, either by message or at a conference, to ask the grounds and evidence, and this evidence, whether arising out of papers or from the examination of witnesses, is immediately communicated. *3 Hats., 48.*

The Houses of Congress transmit with bills accompanying papers, which are returned when the bills pass or at final adjournment (V, 7259, footnote). Sometimes one House has asked, by resolution, for papers from the files of the other (V, 7263, 7264). Testimony is also requested (11I, 1855).

SEC. XLV.—AMENDMENTS BETWEEN THE HOUSES.

§ 514. Parliamentary
principles as
to disagreeing,
insisting, and
adhering.

When either House, *e. g.*, the House of Commons, send a bill to the other, the other may pass it with amendments. The regular progression in this case is, that the Commons disagree to the amendment; the Lords insist on it; the Commons insist on their disagreement; the Lords adhere to their amendment; the Commons adhere to their disagreement. The term of insisting may be repeated as often as they choose to keep the question open. But the first adherence

by either renders it necessary for the other to recede or adhere also; when the matter is usually suffered to fall. *10 Grey, 148.* Latterly, however, there are instances of their having gone to a second adherence. There must be an absolute conclusion of the subject somewhere, or otherwise transactions between the Houses would become endless. *3 Hats., 268, 270.* The term of insisting, we are told by Sir John Trevor, was then (1679) newly introduced into parliamentary usage by the Lords. *7 Grey, 94.* It was certainly a happy innovation, as it multiplies the opportunities of trying modifications which may bring the Houses to a concurrence. Either House, however, is free to pass over the term of insisting, and to adhere in the first instance; *10 Grey, 146;* but it is not respectful to the other. In the ordinary parliamentary course there are two free conferences, at least, before an adherence. *10 Grey, 147.*

The House of Representatives and the Senate follow the principles set forth in this paragraph of the parliamentary law, and sometimes dispose of differences without resorting to conferences (V, 6165).

Where both Houses insist and neither ask a conference or recede the bill fails (V, 6228). Also when both Houses adhere the bill fails (V, 6163, 6313, 6324, 6325) even though the difference may be over a very slight amendment (V, 6233-6240). In rare instances in Congress there has been immediate adherence on the first disagreement (V, 6303); but this does not preclude the granting of the request of the other House for a conference (V, 6241-6244). Sometimes the House recedes from its disagreement as to certain amendments and adheres as to others (V, 6229). One House having adhered, may at the next stage vote to further adhere (V, 6251). Sometimes also the House recedes from adherence (V, 6252, 6401) or reconsiders its action of adherence (V, 6253); after which it has agreed to the amendment with or without amendment (V, 6253, 6401).

§ 515. Insisting
and adhering in
the practice of the
House.

§§ 516-518.

Either House may recede from its amendment and agree to the bill; or recede from their disagreement to the amendment, and agree to the same absolutely, or with an amendment; for here the disagreement and receding destroy one another, and the subject stands as before the disagreement. *Elysngc, 23, 27; 9 Grey, 476.*

In the practice of the two Houses of Congress the motion is to recede from the amendment without at the same time agreeing to the bill, for the bill has already been passed with the amendment, and receding from the amendment leaves the bill passed (V, 6312). One House has receded from its own amendment after the other House had returned it concurred in with an amendment (V, 6226).

§ 517. Practice of the House as to receding from its own amendment to a bill of the other House.

But this has been held not sufficient to pass the bill without further action by House which had concurred with an amendment. (Speaker Clark, on general tariff bill, Oct. 3, 1913, Record, 63d Cong., 1st sess., p. 5437.)

Where one House has receded from an amendment, it may not at a subsequent stage recall its action in order to form a new basis for a conference (V, 6251). Sometimes one House has receded from its amendment although it had previously insisted and asked a conference which had been agreed to (V, 6319). After Senate has amended a House amendment it is not proper for the House to recede from its amendment directly, but Senate may recede from its amendment and then the House recede from its amendment. (Speaker Reed, 51st Cong., 1st sess., p. 5981.)

By receding from its disagreement to an amendment of the Senate the House does not thereby agree to it (V, 6215); but the Senate amendment is then open to amendment precisely as before the original disagreement (V, 6212-6214). The stage of disagreement having been reached, the motion to recede and concur takes precedence of the motion to recede and concur with an amendment

§ 518. Practice of the House as to receding from disagreement to amendment of the other House.

(V, 6219-6223); but a motion to recede and concur is divisible, and being divided and the House having receded, a motion to amend has precedence of the motion to concur (V, 6209-6211) (Speaker Clark, Sept. 30, 1913, 63d Cong., 1st sess., p. 5276), even after previous question is ordered on both motions if pending (Feb. 12, 1923, p. 3512).

The motion to recede and concur in a Senate amendment with an amendment takes precedence of a motion to insist further on the House's disagreement to the Senate amendment (V, 6224), and a motion to lay certain amendments on the table. (Speaker Longworth, Jan. 24, 1927, 69th Cong., 2d sess., p. 2165.) It has been held that after the previous question has been moved on a motion to adhere a motion to recede may not be made (V, 6310); and after the previous question is demanded or ordered on a motion to concur, a motion to

amend is not in order (V, 5488); but where the previous question has been demanded on a motion to insist, a motion to recede and concur has been admitted (V, 6208, 6321a).

But the House can not recede from or insist on its own amendment, with an amendment; for the same reason that it can not send to the other House an amendment to its own act after it has passed the act. They may modify an amendment from the other House by ingrafting an amendment on it, because they have never assented to it; but they can not amend their own amendment, because they have, on the question, passed it in that form. *9 Grey, 363; 10 Grey, 240.* In Senate, March 29, 1798. Nor where one House has adhered to their amendment, and the other agrees with an amendment, can the first House depart from the form which they have fixed by an adherence.

In the case of a money bill, the Lords' proposed amendments become, by delay, confessedly necessary. The Commons, however, refused them, as infringing on their privilege as to money bills; but they offered themselves to add to the bill a proviso to the same effect, which had no coherence with the Lords' amendments; and urged that it was an expedient warranted by precedent, and not unparliamentary in a case become impracticable, and irremediable in any other way. *3 Hats., 256, 266, 270, 271.* But the Lords refused, and the bill was lost. *1 Chand., 288.* A like case, *1 Chand., 311.* * * *

In the House of Representatives it is a recognized principle that the House may not recede from its own amendments with an amendment (V, 6216-6218).

§§ 520-522.

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§ 520. Text to which both Houses have agreed not to be changed.

So the Commons resolved that it is unparliamentary to strike out, at a conference, anything in a bill which hath been agreed and passed by both Houses.
6 Grey, 274; 1 Chand., 312.

The practice of the two Houses has confirmed this principle of the parliamentary law and established the rule that managers of a conference may not change the text to which both Houses have agreed (V, 6417, 6418, 6420), and either House alone may not, by instructions, empower the managers to make such change (V, 6388). In the earlier practice, when it was necessary to change the text already agreed to, the managers appended a supplementary paragraph to their report, and this was agreed to by unanimous consent in the two Houses (V, 6433-6436); but in the later practice it has been found a more effective method for the two Houses to agree to a concurrent resolution giving to the managers the necessary powers (V, 6437-6440). In the House such a resolution would be presented by unanimous consent, under suspension of the rules, or on report from the Committee on Rules.

The further principle has been established in practice of the House of Representatives that it may not, even by unanimous consent (V, 6179), change in the slightest particular (V, 6181) the text to which both Houses have agreed (V, 6180). And this prohibition extends, also, to a case wherein it is proposed to add a new section at the end of a bill which has passed both Houses (V, 6182).

§ 521. Precedence of motion to amend over motion to agree or disagree.

A motion to amend an amendment from the other House takes precedence of a motion to agree or disagree.

This is the rule of the two Houses of Congress (V, 6164, 6169-6171).

A bill originating in one House is passed by the other with an amendment.

§ 522. Degree of amendments between the Houses.

The originating House agrees to their amendment with an amendment. The other may agree to their amendment with an amendment, that being only in the 2d and not the 3d degree; for, as to the amending House, the first

amendment with which they passed the bill is a part of its text. It is the only text they have agreed to. The amendment to that text by the originating House therefore is only in the 1st degree, and the amendment to that again by the amending House is only in the 2d, to wit, an amendment to an amendment, and so admissible. Just so, when, on a bill from the originating House, the other, at its second reading, makes an amendment; on the third reading this amendment is become the text of the bill, and if an amendment to it be moved an amendment to that amendment may also be moved, as being only in the 2d degree.

This principle is followed in the practice of the House of Representatives (V, 6167, 6177, 6178).

SEC. XLVI.—CONFERENCES.

It is on the occasion of amendments between the Houses that conferences are usually asked; but they may be asked in all cases of difference of opinion between the two Houses on matters depending between them. The request of a conference, however, must always be by the House which is possessed of the papers. *3 Hats., 31; 1 Grey, 425.*

§ 523. Parliamentary law as to asking conferences.

The House of Representatives follows the principles set forth in this paragraph of the parliamentary law. A conference may be asked on only a portion of the amendments in disagreement, leaving the differences as to the remainder to be settled by the action of the two Houses themselves (V, 6401). In very rare instances conferences have been asked by one House after the other has absolutely rejected a main proposition

JEFFERSON'S MANUAL.

§§ 524-527.

(IV, 3442; V, 6258). A difference over an amendment to a proposed constitutional amendment may be committed to a conference (V, 7037).

While conferences between the two Houses of Congress are usually held

§ 524. Confer- over differences as to amendments to bills, occasionally
ences over matters differences arise as to the respective prerogatives of
other than differ- the Houses (II, 1485-1495) or as to matters of procedure
ences as to (V, 6401), as in impeachment proceedings (III, 2304),
amendments. which are referred to conference. And in early and

exceptional instances conferences have been asked as to legislative matters when no propositions relating thereto were pending (V, 6255-6257).

In very rare cases, also, the Houses interchange views and come to

§ 525. Confer- conclusions by means of select committees appointed
ences by means on the part of each House (VI, 3). Thus, in 1821, a
of select com- joint committee was chosen to consider and report
mittees. to the two Houses whether or not it was expedient to

consider and report whether or not Missouri should be admitted to the Union (IV, 4471), and in 1877 similar committees were appointed to devise a method for counting the electoral vote (III, 1953).

The parliamentary law provides that the request for a conference must

§ 526. Requests always be by the House which is possessed of the papers.
for conferences. It was formerly the more regular practice for the House
disagreeing to amendments of the other to leave the

asking of a conference to that other House if it should decide to insist (V, 6278-6285, 6324); but it is so usual in the later practice for the House disagreeing to an amendment of the other to ask a conference that an omission to do so has even raised a question (V, 6273). Yet it can not be said that the practice requires a request for a conference to be made by the House disagreeing to the amendments of the other (V, 6274-6277). One House having asked a conference at one session, the other House may agree to the conference at the next session of the same Congress (V, 6286).

In rare instances one House has declined the request of the other for a

§ 527. Requests conference (V, 6313-6315), sometimes accompanying it
for conferences by adherence (V, 6313, 6315). In one instance, where
declined or the Senate declined a conference, it transmitted, by
neglected. message, its reasons for so doing (V, 6313). Sometimes,

also, one House disregards the request of the other for a conference and recedes from its disagreement, thereby rendering a conference unnecessary (V, 6316-6318). And in one case, where one House had asked a conference to which the other had assented, the asking House receded before the conference took place (V, 6319). Also, a bill returned to the House with a request for a conference has been postponed indefinitely (V, 6199).

The motion to ask a conference is distinct from motions to agree or disagree to amendments of the other House (V, 6268) and is not in order until the House has disposed of the preferential motions to agree, recede, or insist (V, 6269, 6270).

Where a conference results in disagreement, a motion for a new conference is privileged (V, 6586). Where a motion to request a conference is rejected, it may not be repeated at the same stage, even though a recess of Congress may have intervened (V, 6325). Sometimes disagreements are voted on by the House and conferences asked through the medium of special orders (IV, 3242-3249).

While usual, it is not essential that one House, in asking a conference, transmit the names of its managers at the same time (V, 6405). The managers, properly so called (V, 6335), constitute practically two distinct committees, each of which acts by a majority (V, 6334). They are usually three in number from each House (V, 6336); but in the absence of joint rules each House may appoint whatever numbers it sees fit (V, 6328-6330, 6405), the Speaker in the House frequently fixing the number (V, 6336). Instances have occurred where one House has appointed three managers and the other a greater number (V, 6331-6333). The Senate having appointed nine managers and the House only three, a motion to instruct the Speaker to appoint a greater number of managers on part of the House was held out of order (63d Cong., 2d sess., p. 1316). The Speaker appoints the managers in the House (Rule X, § 2), selecting them so as to represent the attitude of the majority and minority of the House on the disagreements in issue (V, 6336-6338); and while it is usual to represent the party divisions of the House the representation of opinions as to the pending differences is rather the more important consideration (V, 6339, 6340). In appointing managers the Speaker usually consults the Member in charge of the bill (V, 6327), and selects the managers from the committee which reported the bill (V, 6336); but where the committee which has charge holds to an attitude to which the House disagrees the managers have been appointed to reflect the views of the House (V, 6369). While the major part of the managers represent the majority view of the House, while a minority manager represents the minority, in one instance, when the prerogatives of the House were involved, all the managers were selected to represent the majority opinion (V, 6338).

Where there were several conferences on a bill, it was the early practice to change the managers at each conference (V, 6288-6291, 6324), and so fixed was this practice that their reappointment had a special significance, indicating an unyielding temper (V, 6352-6368); but in the later practice it is the rule to reappoint managers (V, 6341-6344) unless a change be necessary to enable the sentiment of the House to be represented (V, 6369).

§§ 531-533.

Managers of a conference are excused from service only by authority of the House (V, 6373-6376); but the absence of a manager causes a vacancy which the Speaker fills by appointment (V, 6372). Where one House makes a change in its managers, it informs the other House, by message (V, 6377, 6378). According to the later practice the powers of managers who have not reported do not expire by reason of the termination of a session of Congress, unless it be the last session (V, 6260-6262).

Conferences may be either simple or free. At a conference simply written reasons are prepared by the House asking it, and they are read and delivered, without debate, to the managers of the other House at the conference, but are not then to be answered. *4 Grey, 144.* The other House then, if satisfied, vote the reasons satisfactory, or say nothing; if not satisfied, they resolve them not satisfactory and ask a conference on the subject of the last conference, where they read and deliver, in like manner, written answers to those reasons: *3 Grey, 183.* They are meant chiefly to record the justification of each House to the nation at large and to posterity and in proof that the miscarriage of a necessary measure is not imputable to them. *3 Grey, 255.* At free conferences the managers discuss, viva voce and freely, and interchange propositions for such modifications as may be made in a parliamentary way, and may bring the sense of the two Houses together. * * *

This provision of the parliamentary law bears little relation to the modern practice of the two Houses of Congress, and that practice has evolved a new definition: "A free conference is that which leaves the committee of conference entirely free to pass upon any subject where the two branches have disagreed in their votes, not, however, including any action upon any subject where there has been a concurrent vote of both branches. A simple conference—perhaps it should more properly be termed a strict or a specific conference, though the parliamentary term is "simple"—is that which confines the committee of conference to the specific instruc-

§ 533. Free and simple conferences in modern practice.

tions of the body appointing it" (V. 6403). And where the House had asked a free conference it was held not in order to instruct the managers (V, 6384). But it is very rare for the House in asking a conference to specify whether it shall be free or simple.

In their practice as to the instruction of managers of a conference the House of Representatives and the Senate do not agree. Only in rare instances has the Senate instructed (V, 6398), and these instances are at variance with its declaration, made after full consideration, that managers may not be instructed (V, 6397). And where the House has instructed its managers, the Senate has declined to participate and asked a free conference (V, 6402-6404). In the later practice the House does not inform the Senate when it instructs its managers (V, 6399), the Senate having objected to the transmittal of instructions by message (V, 6400, 6401). In one instance wherein the Senate learned indirectly that the House had instructed its managers it declared that the conference should be full and free, and instructed its own managers to withdraw if they should find the freedom of the conference impaired (V, 6406). But the House of Representatives holds to the opinion that the House may instruct its managers (V, 6379-6382), although the propriety of doing so at a first conference is open to serious doubt (V, 6388, footnote). And in rare instances where a free conference is asked instruction is not in order (V, 6384). At a new conference the instructions of a former conference are not in force (V, 6383). And instructions may not direct the managers to do that which they might not otherwise do (V, 6386, 6387), as to effect a change in part of a bill not in disagreement (V, 6391-6394), or change the text to which both Houses have agreed (V, 6388). Although managers may disregard instructions, their report may not for that reason be ruled out of order (V, 6395. Speaker Clark, Dec. 22, 1913, 63d Cong., 2d sess., p. 1430), and when a conference report is recommitted with instructions the managers are not confined to the instructions alone (Speaker Gillett, Sept. 15, 1922, 67th Cong., 2d sess., p. 12711). The motion to instruct managers should be offered after the vote to ask for or agree to a conference and before the managers are appointed (V, 6379-6382). The motion to instruct may be amended unless the previous question be ordered (V, 6525), and may be laid on the table without carrying the bill to the table (Nov. 10, 1921, p. 7620). The motion is debatable unless the previous question is demanded by the Member in charge of the bill. (Speaker Clark, Feb. 25, 1919, p. 4259.) Only one motion to instruct is in order. (Speaker Clark, 62d Cong., 3d sess., p. 4344.)

* * *

§ 535. Parliamentary law as to reports of managers of a conference.

And each party reports in writing to their respective Houses the substance of what is said on both sides, and it is entered in their journals. *9 Grey, 220; 3 Hats., 280.*

§§ 536-539.

This report can not be amended or altered, as that of a committee may be. *Journal Senate, May 24, 1796.*

In the two Houses of Congress conference reports were originally merely suggestions for action and were neither identical in the two Houses nor acted on as a whole (V, 6468-6471). In the House of Representatives, Rule XXVIII, provides that conference reports may be received at any time, except when the Journal is being read, while the roll is being called or the House is dividing. The early reports were not signed by the managers (IV, 3905); but in the later practice the signatures of the majority of the managers of each House is required (V, 6497-6502). Sometimes a manager indorses the report with a conditional approval or dissent (V, 6489-6496, 6538). The name of an absent manager may not be affixed, but the two Houses by concurrent action may authorize him to sign the report after it has been acted on (V, 6488). The minority portion of the managers of a conference have no authority to make either a written or verbal report concerning the conference (V, 6406). In the later practice reports of managers are identical, and made in duplicate for the two Houses, the House managers signing first the report for their House and the Senate managers signing the other report first (V, 6323, 6426, 6499, 6500, 6504). Under certain circumstances managers may report an entirely new bill on a subject in disagreement, but this bill is acted on as part of the report (V, 6465-6467).

Managers may report an agreement as to a portion of the amendments in disagreement, leaving the remainder to be disposed of by subsequent action (V, 6460-6464).

§ 537. Partial conference reports.

Where managers of a conference are unable to agree, or where a report is disagreed to in either House, another conference is usually asked (V, 6288-6291). When managers report that they have been unable to agree, the report is not acted on by the House of Representatives (V, 6562). (Speaker Clark, Feb. 5, 1919, p. 2757.) In the earlier practice reports of inability to agree were made verbally or by unsigned written reports (V, 6563-6567); but in later practice they are written, in identical form, and signed by the managers of the two Houses (V, 6568, 6569).

§ 538. Reports of inability to agree.

The managers of a conference must confine themselves to the differences committed to them (V, 6417, 6418), and may not include subjects not within the disagreements (V, 6407, 6408), even though germane to a question in issue (V, 6419). (Speaker Longworth, June 22, 1926, p. 11788.) But they may perfect amendments committed to them if they do not in so doing go beyond the differences (V, 6409-6413). Thus, where an amendment providing an appropriation to construct a road had

§ 539. Managers restricted to the disagreements of the two Houses.

been disagreed to, it was held in order to report a provision to provide for a survey for the road (V, 6425). Managers may not change the text to which both Houses have agreed (V, 6417, 6418, 6420, 6433-6436). But where the amendment in issue strikes out all of the bill after the enacting clause and substitutes a new text, the managers have the whole subject before them and may exercise a broad discretion as to details (V, 6424) and may even report an entirely new bill on the subject (V, 6421-6423) (Speaker Clark, 62d Cong., 1st sess., p. 3913, Aug. 14, 1911). Where the amendment in disagreement proposes a substitute differing greatly from the House provision they may eliminate the entire subject matter (Speaker Gillett, Sept. 14, 1922, 67th Cong., 2d sess., p. 12598). For complete decisions consult sections 942-946.

In the House of Representatives the Speaker may rule out a conference report if it be shown that the managers have exceeded their authority (V, 6409-6416) (see sec. 947, Digest). In the House points of order against reports are made or reserved after the report is read and before the reading of the statement (V, 6424, 6441), or consideration begins (V, 6903-6905), or the report has been agreed to (V, 6442) and in case the statement is read in lieu of the report the point of order must be made or reserved before the statement is read (Apr. 3, 1922, p. 4947).

In the Senate under the former practice the Chair did not rule out conference reports, but the Senate itself expressed its opinion on the vote to agree to the report (V, 6426-6432), but on March 8, 1918, the Senate adopted a rule providing for a point of order against conferees inserting matter not committed to them or changing the text agreed to by both Houses and also providing for automatic recommitting of such report to the committee of conference in case the point of order is sustained. This rule of the Senate has been strictly construed (Aug. 25, 1922, p. 11766; Feb. 20, 1925, p. 4244).

Before managers of a conference may report the other House must be notified of their appointment and a meeting must be held (V, 6458). Conferences are generally held in the Senate portion of the Capitol, and with closed doors, although in rare instances Members and others have been admitted to make arguments (V, 6254, footnote, 6263). Rarely, also, papers in the nature of petitions have been referred to managers (V, 6263). The managers of the two Houses vote separately (V, 6336).

The report of the managers of a conference goes first to one House and then to the other, neither House acting until it is in possession of the papers, which means the original bill and amendments, as well as the report (V, 6322, 6518-6522, 6586). The report must be acted on as a whole, being agreed to or

§ 540. Remedy
where managers
exceed their
authority.

§ 541. Meeting
and action of
managers.

§ 542. Action on a
conference report
in the two Houses.

JEFFERSON'S MANUAL.

§§ 543, 544.

disagreed to as an entirety (V, 6472-6480, 6530-6533); and until the report has been acted on no motion to deal with the individual amendments is in order (V, 6323, 6389, 6390). While ordinarily reports are agreed to by majority vote, a two-thirds vote is required on a report relating to a constitutional amendment (V, 7036). In a case wherein a report provided that the House recede from an amendment, which was the only matter in disagreement, and the House agreed to the report, the presiding officers signed the bill, although the Senate had not acted on the report (V, 6587). A conference report being made up but not acted on at the expiration of a Congress, the bill is lost (V, 6309). One House has, by message, reminded the other of its neglect to act on a conference report; but this was an occasion of criticism (V, 6309).

When a conference report is presented, the question on agreeing is regarded as pending (V, 6517), and as the negative of it is equivalent to disagreement, the motion to disagree is not admitted (II, 1473). The reading of the amendments to which the report relates is not in order during its consideration (V, 5298). The report may not be amended on motion made in either House alone (V, 6534, 6535), but amendment is sometimes made by concurrent action of the two Houses (V, 6536, 6537). A motion to refer to a standing committee (V, 6558) or to lay on the table is not entertained in the House (V, 6538-6544); and a conference report may not be sent to Committee of the Whole on suggestion that it contains matter ordinarily requiring consideration in that committee (V, 6559-6561). It is in order on motion to recommit a conference report if the other body, by action on the report, have not discharged their managers (V, 6545-6553, 6609) and by concurrent action of the two Houses a report has been recommitted after one House had acted on it, but such a proposition would not be privileged in the House (V, 6554-6557).

A bill being recommitted to the committee of conference, no further action is taken by the House until it is again reported by the managers (Speaker Clark, May 12, 1917, p. 2216; May 16, 1917; Feb. 14, 1919, p. 3362), and when reported is subject to another motion to recommit (Speaker Gillett, Sept. 15, 1922, 67th Cong., 2d sess., p. 12717).

When either House disagrees to a conference report the matter is left in the position it was in before the conference was asked (V, 6525), and the amendments in disagreement come up for further action (II, 1473), but do not return to the state they were in before disagreement, so that they may be required to go to Committee of the Whole (V, 6589).

§ 543. Motions in order during action on a conference report.

§ 544. Effect of disagreement to a conference report.

A conference may be asked, before the House asking it has come to a resolution of disagreement, insisting or adhering. 3 *Hats.*, 269, 341. In which case the papers are not left with the other conferees, but are brought back to be the foundation of the vote to be given. And this is the most reasonable and respectful proceeding; for, as was urged by the Lords on a particular occasion, "it is held vain, and below the wisdom of Parliament, to reason or argue against fixed resolutions, and upon terms of impossibility to persuade." 3 *Hats.*, 226. * * *

In the Houses of Congress conferences are sometimes asked before a disagreement, and while the rule as to retention of the papers undoubtedly holds good, neglect to observe it has not been questioned (V, 6585).

* * * So the Commons say, "an adherence is never delivered at a free conference, which implies debate." 10 *Grey*, 137. And on another occasion the Lords made it an objection that the Commons had asked a free conference after they had made resolutions of adhering. It was then affirmed, however, on the part of the Commons that nothing was more parliamentary than to proceed with free conferences after adhering, 3 *Hats.*, 269, and we do in fact see instances of conference, or of free conference, asked after the resolution of disagreeing, 3 *Hats.*, 251, 253, 260, 286, 291, 316, 349; of insisting, *ib.*, 280, 296, 299, 319, 322, 355; of adhering, 269, 270,

§ 545. Custody of papers when a conference is asked before disagreement.

§ 546. Relations of adherence and conference under the parliamentary law.

§§ 547-549.

283, 300; and even of a second or final adherence.
3 Hats., 270. * * *

The two Houses not observing the parliamentary distinctions as to free and other conferences, their practice in case of adherence is also different. Conferences are not asked after an adherence by both Houses, but have often been asked and granted where only one House has adhered (V, 6241-6244). A vote to adhere may not be accompanied by a request for a conference (V, 6303), as the House that votes to adhere does not ask a conference (V, 6304-6308). The request for a conference in such a case is properly accompanied by a motion to insist (V, 6308). And the House that has adhered may insist on its adherence when it agrees to the conference (V, 6325), or it may recede from its adherence and agree to the conference (V, 6251). But it is not considered necessary either to recede or insist before agreeing to the conference (V, 6242, 6244, 6310, 6311).

* * * And in all cases of conference asked after a vote of disagreement, &c., the conferees of the House asking it are to leave the papers with the conferees of the other; and in one case where they refused to receive them they were left on the table in the conference chamber.
Ib., 271, 317, 323, 354; 10 Grey, 146.

This principle of the parliamentary law is recognized as of effect in the two Houses of Congress, and is always followed in cases wherein the managers of the conference come to an agreement on which a report may be based. If conferees of House agreeing to conference surrender papers to House asking conference, report can be received first by House asking the conference. (Speaker Clark, 62d Cong., 1st sess., Cong. Rec., p. 3872). But where a conference breaks up without reaching any agreement the managers for the House which asked the conference, who have the papers by right, are justified in retaining them and carrying them back to the House (IV, 3905 footnote, V, 6246, 6254, 6571-6584). And in one case wherein under such circumstances the papers were taken back to the Senate, which was the body agreeing to the conference, the

§ 547. Relations of adherence and conference under the practice of the two Houses of Congress.

§ 548. Custody of the papers after an effective conference.

§ 549. Custody of papers when managers of a conference fail to agree.

Senate after consideration sent them to the House, since it seemed proper for the asking House to take the first action (V, 6573). But sometimes managers have brought the papers to the agreeing House without question (V, 6239, footnote).

After a free conference the usage is to proceed with

§ 550. Free or instructed conferences.

free conferences and not to return again to a conference. *3 Hats.*, 270; *9 Grey*, 229.

After a conference denied a free conference may be asked. *1 Grey*, 45.

The House of Representatives instructs its managers whenever it sees fit, without regard to whether or not the preceding conference has been free or instructed.

When a conference is asked, the subject of it must

§ 551. Parliamentary law as to purposes for which conferences may be held.

be expressed or the conference not agreed to. *Ord. H. Com.*, 89; *1 Grey*, 425; *7 Grey*, 31. They are sometimes asked to inquire concerning an offense

or default of a member of the other House. *6 Grey*, 181; *1 Chand.*, 304. Or the failure of the other House to present to the King a bill passed by both Houses. *8 Grey*, 302. Or on information received and relating to the safety of the nation. *10 Grey*, 171. Or when the methods of Parliament are thought by the one House to have been departed from by the other a conference is asked to come to a right understanding thereon. *10 Grey*, 148. So when an unparliamentary message has been sent, instead of answering it they ask a conference. *3 Grey*, 155. Formerly an address or articles of impeachment or a bill, with amendments, or a vote of the House, or concur-

§§ 552-555.

rence in a vote, or a message from the King were sometimes communicated by way of conference. *6 Grey, 128, 300, 387; 7 Grey, 80; 8 Grey, 210, 255; 1 Torbuck's Deb., 278; 10 Grey, 293; 1 Chandler, 49, 287.* But this is not the modern practice. *8 Grey, 255.*

§ 552. Obsolete provision as to conference on first reading.

A conference has been asked after the first reading of a bill. *1 Grey, 194.* This is a singular instance.

The House of Representatives has no procedure conforming to this provision.

SEC. XLVII.—MESSAGES.

§ 553. Messages sent only when both Houses are sitting.

Messages between the Houses are to be sent only while both Houses are sitting. *3 Hats., 15. * * **

Formerly this rule was observed (V, 6603, 6604), but since the Sixty-second Congress messages have been received when the Senate was not in session. (Speaker Clark, June 13, 1911, 62d Cong., 1st sess., p. 1968.)

§ 554. Messages received during debate.

* * * They are received during a debate without adjourning the debate. *3 Hats., 22.*

In the House of Representatives messages are received during debate, the Member having the floor yielding on request of the Speaker.

In Senate the messengers are introduced in any state of business, except: 1. While a question is being put. 2. While the yeas and nays are being called. 3. While the ballots are being counted. The first case is short; the second and third are cases

§ 555. Reception of messages during voting, in absence of a quorum, etc.

where any interruption might occasion errors difficult to be corrected. So arranged June 15, 1798.

In the House of Representatives messages are not received while a question is being put, during a division by rising vote, or during a vote by tellers; but they are received during the call of the yeas and nays, during consideration of a question of privilege (V, 6640-6642), during a call of the House (V, 6600, 6650), and before the organization of the House (V, 6647-6649). But the Speaker exercises his discretion about interrupting the pending business (V, 6602).

In the House of Representatives, as in Parliament, if the House be in committee when a messenger attends, the Speaker takes the chair to receive the message, and then quits it to return into committee, without any question or interruption. *4 Grey, 226.*

§ 556. Informal rising of Committee of the Whole to receive a message.

Messengers are not saluted by the Members, but by the Speaker for the House. *2 Grey, 253, 274.*

The practice of the House of Representatives as to reception of messages is founded on this paragraph of the parliamentary law and on the former joint rules (V, 6591-6595). The Speaker, with a slight inclination, addresses the messenger, by his title, after the messenger, with an inclination, has addressed "Mr. Speaker" (V, 6591).

If messengers commit an error in delivering their message, they may be admitted or called in to correct their message. *4 Grey, 41.*

§ 557. Salutation of messengers by the Speaker.

Accordingly, March 13, 1800, the Senate having made two amendments to a bill from the House of Representatives, their Secretary, by mistake, delivered one only, which being inadmissible by itself,

§§ 559, 560.

that House disagreed, and notified the Senate of their disagreement. This produced a discovery of the mistake. The Secretary was sent to the other House to correct his mistake, the correction was received, and the two amendments acted on *de novo*.

The request of the Senate that its Secretary be allowed to correct an error in a message was granted by order of the House (V, 6605), and in a similar case, when the House directed its clerk to correct an error in a message to the Senate, the Senate agreed to the correction (V, 6607). In the House a proposition to correct an error in a message to the Senate is received as a question of privilege (III, 2613). One House sometimes asks of the other the return of a message (V, 6609-6611).

As soon as the messenger who has brought bills from the other House has retired, the Speaker holds the bills in his hand, and acquaints the House "that the other House have by their messenger sent certain bills," and then reads their titles, and delivers them to the Clerk to be safely kept till they shall be called for to be read. *Hakew., 178.*

In the House of Representatives the message goes to the Speaker's table, but the Speaker does not acquaint the House, as they have already heard the message. From the Speaker's table messages are disposed of under Rule XXIV, § 2.

It is not the usage for one House to inform the other by what numbers a bill is passed. 10
Grey, 150. Yet they have sometimes recommended a bill, as of great impor-

§ 559. Disposal of
messages after
reception.

§ 560. Information
by message as to
bills passed.

tance, to the consideration of the House to which it is sent. *3 Hats., 25. * * **

The Houses of Congress do not communicate by what numbers a bill is passed, or otherwise recommend their bills.

* * * Nor when they have rejected a bill from the other House, do they give notice of it; but it passes sub silentio, to prevent unbecoming altercations. *1 Blackst., 183.*

But in Congress the rejection is notified by message to the House in which the bill originated.

In the two Houses of Congress the rejection of a bill is notified to the House in which the bill originated, as in the days of Jefferson, although the joint rule requiring it has disappeared (IV, 3422; V, 6601). And in a case wherein the House had stricken out the enacting words of a Senate bill, the Senate was notified that the bill had been rejected (IV, 3423).

A question is never asked by the one House of the other by way of message, but only at a conference; for this is an interrogatory, not a message. *3 Grey, 151, 181.*

In 1798 the House of Representatives asked of the Senate a question by way of conference, but this appears to be the only instance (V, 6256).

When a bill is sent by one House to the other, and is neglected, they may send a message to remind them of it. *3 Hats., 25; 5 Grey, 154.* But if it be mere inattention, it is better to have it done informally by communication between the Speakers or Members of the two Houses.

It does not appear that either House of Congress has reminded the other of a neglected bill.

§§ 564, 565.

Where the subject of a message is of a nature that it can properly be communicated to both Houses of Parliament, it is expected that this communication should be made to both on the same day. But where a message was accompanied with an original declaration, signed by the party to which the message referred, its being sent to one House was not noticed by the other, because the declaration being original, could not possibly be sent to both Houses at the same time. *2 Hats., 260, 261, 262.*

The King having sent original letters to the Commons afterward desires they may be returned, that he may communicate them to the Lords. *1 Chandler, 303.*

A message of the President of the United States is usually communicated to both Houses on the same day when its nature permits (V, 6590); but an original document accompanying can, of course, be sent to but one House (V, 6616, 6617). The President having by inadvertence included certain papers in a message, was allowed to withdraw them (V, 6651).^a

SEC. XLVIII.—ASSENT.

The House which has received a bill and passed it may present it for the King's assent, and ought to do it, though they have not by message notified to the other their passage of it. Yet the notifying by message is a form which ought to be observed between the two Houses from motives of respect and

^a In House of Representatives roll call is suspended at the discretion of the Speaker to receive messages from the President, but this is seldom done.

good understanding. *2 Hats., 242.* Were the bill to be withheld from being presented to the King, it would be an infringement of the rules of Parliament. *Ib.*

In the House of Representatives it was held that where there had been no unreasonable delay in transmitting an enrolled bill to the President, a resolution relating thereto did not present a question of privilege (III, 2601).

When a bill has passed both Houses of Congress, the House last acting on it notifies its passage to the other, and delivers the bill to the Joint Committee of Enrollment, who sees that it is truly enrolled in parchment. When the bill is enrolled it is not to be written in paragraphs, but solidly, and all of a piece, that the blanks between the paragraphs may not give room for forgery. *9 Grey, 143. * * **

Formerly the enrollment in the House of Representatives and the Senate was in writing (IV, 3436, 3437); but in 1893 the two Houses, by concurrent resolution, provided that bills should be enrolled on parchment by printing instead of by writing, and also that the engrossment of bills prior to sending them to the other House for action should be in printing (IV, 3433), and in 1895 this concurrent resolution was approved by statute (IV, 3435). In the last six days of a session of Congress the two Houses, by concurrent resolution, may permit the enrolling and engrossing to be done by hand (IV, 3435, 3438). Only in a very exceptional case have the two Houses waived the requirement that bills shall be enrolled (IV, 3442). The enrolling clerk should make no change, however unimportant, in the text of a bill to which the House has agreed (III, 2598); but the two Houses may by concurrent resolution authorize the correction of an error when enrollment is made (IV, 3446-3450), and this seems a better practice than earlier methods by authority of the Committee on Enrolled Bills (IV, 3444, 3445).

** * ** It is then put into the hands of the Clerk of the House of Representatives to have it signed by the Speaker. The Clerk then brings it by way of message to the

§ 566. Parliamentary law as to enrollment of bills.

§ 567. Practice of the two Houses of Congress as to enrollment of bills.

§ 568. Signing of enrolled bills for presentation to the President.

§§ 569-571.

Senate to be signed by their President. The Secretary of the Senate returns it to the Committee of Enrollment, who present it to the President of the United States. * * *

The practice of the two Houses of Congress for the signing of enrolled bills was formerly governed by joint rules, and has continued since those rules were abrogated in 1876 (IV, 3430). The bills are signed first by the Speaker, then by the President of the Senate (IV, 3429). By unanimous consent where errors are found in enrolled bills that have been signed, the two Houses by concurrent action may authorize the cancellation of the signatures and a reenrollment (IV, 3453-3459), and in the same way the signatures may be cancelled on a bill prematurely enrolled (IV, 3454).

A Speaker pro tempore elected by the House (II, 1401) or whose designation has received the approval of the House (II, 1404), signs enrolled bills; but a Member merely called to the chair during the day (II, 1399, 1400), or designated in writing by the Speaker, does not exercise this function (II, 1401). The Senate, by rule, has empowered a presiding officer by written designation to sign enrolled bills (II, 1403).

In early days a joint committee took enrolled bills to the President (IV, 3432); but in the later practice the chairman of the committee for each House presents the bills from his House, and submits from his committee daily a report of the bills presented for entry in the journal (IV, 3431).

Enrolled bills pending at the close of a session have, at the next session of the same Congress, been ordered to be treated as if no adjournment had taken place (IV, 3487, 3488). And enrolled bills signed by the presiding officers at one session have been sent to the President and approved at the next session of the same Congress (IV, 3486).

SEC. XLIX.—JOURNALS.

* * * * *

If a question is interrupted by a vote to adjourn, or to proceed to the orders of the day, the original question is never printed in the journal, it never having been a vote, nor introductory to any vote; but when suppressed by the previous question, the first question must be

§ 571. Obsolete provisions as to entry of motions in the journal.

stated, in order to introduce and make intelligible the second. *2 Hats., 83.*

This provision of the parliamentary law is superseded by Rule XVI, § 1.

So also when a question is postponed, adjourned, or laid on the table, the original question, though not yet a vote, must be expressed in the journals, because it makes part of the vote of postponement, adjourning, or laying it on the table.

§ 572. Journal entries of questions postponed, or laid on the table.

In the House of Representatives a question is not adjourned, except in the sense that it may be left to go over as unfinished business by reason of a vote to adjourn.

Where amendments are made to a question, those amendments are not printed in the journals, separated from the question; but only the question as finally agreed to by the House. The rule of entering in the journals only what the House has agreed to, is founded in great prudence and good sense, as there may be many questions proposed which it may be improper to publish to the world in the form in which they are made. *2 Hats., 85.*

§ 573. Entry of amendments in the journal.

In the practice of the House of Representatives a motion to amend is entered on the Journal as any other motion, under Rule XVI, § 1.

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§ 574. Entry of votes in journal of the House of Commons.

The first order for printing the votes of the House of Commons was October 30, 1685. *1 Chandler, 387.*

Some judges have been of opinion that the journals of the House of Commons are no records, but only remembrances. But this is not law. *Hob., 110, 111;*

§ 575. The journal as an official record.

§ 576.

Lex. Parl., 114, 115; *Jour. H. C.*, Mar. 17, 1592; *Hale, Parl.*, 105. For the Lords in their House have power of judicature, the Commons in their House have power of judicature, and both Houses together have power of judicature; and the book of the Clerk of the House of Commons is a record, as is affirmed by act of Parl., 6 H. 8, c. 16; 4 *Inst.*, 23, 24; and every member of the House of Commons hath a judicial place. 4 *Inst.*, 15. As records they are open to every person, and a printed vote of either House is sufficient ground for the other to notice it. Either may appoint a committee to inspect the journals of the other, and report what has been done by the other in any particular case. 2 *Hats.*, 261; 3 *Hats.*, 27-30. Every member has a right to see the journals and to take and publish votes from them. Being a record, every one may see and publish them. 6 *Grey*, 118, 119.

The Journal of the House of Representatives is the official record of the proceedings of the House (IV, 2727), and certified copies are admitted as evidence in the courts of the United States (IV, 2810). A Senate committee concluded that the Journal entries of a legislative body were conclusive as to all the proceedings had, and might not be contradicted by ex parte evidence (I, 563).

On information of a misentry or omission of an entry in the journal, a committee may be appointed to examine and rectify it, and report it to the House. 2 *Hats.*, 194, 195.

§ 576. Correction
of the Journal
through a
committee.

. SEC. L.—ADJOURNMENT.

The two Houses of Parliament have the sole, separate, and independent power of adjourning each their respective Houses. The King has no authority to adjourn them; he can only signify his desire, and it is in the wisdom and prudence of either House to comply with his requisition, or not, as they see fitting. *2 Hats., 232; 1 Blackst., 186; 5 Grey, 122.*

§ 577. Parliamentary law as to adjournment of the Commons and Lords.

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A motion to adjourn, simply, cannot be amended, as by adding "to a particular day;" but must be put simply "that this House do now adjourn;" and if carried in the affirmative, it is adjourned to the next sitting day, unless it has come to a previous resolution, "that at its rising it will adjourn to a particular day," and then the House is adjourned to that day. *2 Hats., 82.*

§ 578. Motion to adjourn not to be amended.

This rule is of effect in the modern practice of the House of Representatives (Rule XVI, § 4).

Where it is convenient that the business of the House be suspended for a short time, as for a conference presently to be held, &c., it adjourns during pleasure; *2 Hats., 305;* or for a quarter of an hour. *4 Grey, 331.*

§ 579. Motion for a recess.

An adjournment during pleasure is effected in the House of Representatives by a motion for a recess. A recess may not be taken by less than a quorum (IV, 2958-2960), and consequently the motion for it is not in order

§§ 580, 581.

in the absence of a quorum (IV, 2955-2957). When the hour previously fixed for a recess arrives, the Chair declares the House in recess even in the midst of a division or when a quorum is not present (V, 6665, 6666); but a roll call is not in this way interrupted (V, 6054, 6055). Where a special order requires a recess at a certain hour of a certain day, the recess is not taken if the encroachment of a prior legislative day prevents the existence of the said certain day as a legislative day (IV, 3192). And an adjournment at a time prior to the hour fixed for a recess vacates the recess (IV, 3283). A motion for a recess must, when entertained, be voted on, even though the taking of the vote may have been prevented until after the hour specified for the conclusion of the proposed recess (V, 6667). A Committee of the Whole takes a recess only by permission of the House (V, 6669-6671). The motion for a recess is not privileged (V, 5301, 5302, 6740) against a demand that business proceed in the regular order (V, 6663).^a

If a question be put for adjournment, it is no adjournment till the Speaker pronounces it. *5 Grey, 137*. And from courtesy and respect, no member leaves his place till the Speaker has passed on.

§ 580. Adjournment pronounced by the Speaker.

SEC. LI.—A SESSION.

Parliament have three modes of separation, to wit: by adjournment, by prorogation or dissolution by the King, or by the efflux of the term for which they were elected. Prorogation or dissolution constitutes there what is called a session; provided some act was passed. In this case all matters depending before them are discontinued, and at their next meeting are to be taken up *de novo*, if taken up at all. *1 Blackst., 186*. Adjournment, which is by themselves, is no more than a continuance

^a During session of Congress neither House shall adjourn for more than three days without consent of the other. (Constitution U. S., art. 1, sec. 6, par. 1.)

of the session from one day to another, or for a fortnight, a month, &c., ad libitum. All matters depending remain in statu quo, and when they meet again, be the term ever so distant, are resumed, without any fresh commencement, at the point at which they were left. 1 *Lev.*, 165; *Lex. Parl.*, c. 2; 1 *Ro. Rep.*, 29; 4 *Inst.*, 7, 27, 28; *Hutt.*, 61; 1 *Mod.*, 252; *Ruffh. Jac.*, *L. Dict. Parliament*; 1 *Blackst.*, 186. Their whole session is considered in law but as one day, and has relation to the first day thereof. *Bro. Abr. Parliament*, 86.

Committees may be appointed to sit during a recess by adjournment, but not by prorogation. 5 *Grey*, 374; 9 *Grey*, 350; 1 *Chandler*, 50. Neither House can continue any portion of itself in any parliamentary function beyond the end of the session without the consent of the other two branches. When done, it is by a bill constituting them commissioners for the particular purpose.

The House of Representatives may empower a committee to sit during a recess which is within the constitutional term of the House (IV, 4541-4543), but not thereafter (IV, 4545). Therefore committees are created commissioners by law if their functions are to extend beyond the term of the Congress (IV, 4545).

Congress separate in two ways only, to wit, by adjournment, or dissolution by the efflux of their time. What, then, constitutes a session with them? A dissolution certainly closes one session, and the meeting of the new Congress begins another. The Constitution authorizes

§ 582. Sitting of committees in recesses, and creation of commissions to sit after Congress adjourns.

§ 583. Sessions and recesses of Congress.

§ 584.

the President, "on extraordinary occasions to convene both Houses, or either of them." *I, 3.* If convened by the President's proclamation, this must begin a new session, and of course determine the preceding one to have been a session. So if it meets under the clause of the Constitution which says, "the Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day." *I, 4.* This must begin a new session; for even if the last adjournment was to this day the act of adjournment is merged in the higher authority of the Constitution, and the meeting will be under that, and not under their adjournment. So far we have fixed landmarks for determining sessions. * * *

In the later practice of Congress it has been established that when the two Houses adjourn for more than three days and not to or beyond a day fixed by Constitution or law for the next regular session to begin, the session is not thereby necessarily terminated (V, 6676, 6677). And in one instance the two Houses by concurrent resolution provided for adjournment to a certain day with a provision that if there be no quorum present on that day the session should terminate (V, 6686). In the later but not the earlier practice the fact that Congress has met once within the year does not make uncertain the constitutional mandate to meet on the first Monday of December (*I, 10, 11*). And where a special session continued until the time prescribed by the Constitution for the annual meeting without an appreciable intervening time (V, 6690, 6692), a question arose as to whether there had actually been a recess of Congress (V, 6687, 6693), with the conclusion that a recess was a real and not an imaginary time (V, 6687).

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§ 584. Manner of closing a session by action of the two Houses.

In other cases it is declared by the joint vote authorizing the President of the Senate and the Speaker to close the session on a fixed day, which is usually in the following form: "Resolved by the Senate and

House of Representatives, that the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on the ——— day of ———.”

In the modern practice the resolving clause of the joint resolution is in form different from that given by Jefferson (sec. 924). At the close of the first session of the Sixty-sixth Congress, the two Houses adjourned sine die under authority granted each House by simple resolutions consenting to such adjournment sine die at any time prior to a specified date. (Congressional Record, Nov. 19, 1919.)

When it was said above that all matters depending before Parliament were discontinued by the determination of the session, it was not meant for judiciary cases depending before the House of Lords, such as impeachments, appeals, and writs of error. These stand continued, of course, to the next session. *Raym.*, 120, 381; *Ruffh. Fac.*, L. D., *Parliament*.

Impeachments stand, in like manner, continued before the Senate of the United States.

In the House of Representatives Rule XXVI and the practice thereunder show that the two Houses of Congress have departed from the Parliamentary law.

SEC. LII.—TREATIES.

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Treaties are legislative acts. A treaty is the law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation. In all countries, I believe, except England, treaties are made by the legislative power; and there, also, if they touch the laws of the land they must be approved by Parliament. *Ware v. Hylton*, 3 *Dallas's Rep.*, 223.

§ 556. General nature of treaties.

§ 587.

It is acknowledged, for instance, that the King of Great Britain cannot by a treaty make a citizen of an alien. *Vattel*, b. 1, c. 19, sec. 214. An act of Parliament was necessary to validate the American treaty of 1783. And abundant examples of such acts can be cited. In the case of the treaty of Utrecht, in 1712, the commercial articles required the concurrence of Parliament; but a bill brought in for that purpose was rejected. France, the other contracting party, suffered these articles, in practice, to be not insisted on, and adhered to the rest of the treaty. 4 *Russell's Hist. Mod. Europe*, 457; 2 *Smollet*, 242, 246.

By the Constitution of the United States this department of legislation is confined to two branches only of the ordinary legislature—the President originating and the Senate having a negative. To what subjects this power extends has not been defined in detail by the Constitution; nor are we entirely agreed among ourselves. 1. It is admitted that it must concern the foreign nation party to the contract, or it would be a mere nullity, *res inter alios acta*. 2. By the general power to make treaties, the Constitution must have intended to comprehend only those subjects which are usually regulated by treaty, and can not be otherwise regulated. 3. It must have meant to except out of these the rights reserved to the States; for surely the President and Senate can not do by treaty what the whole Government is interdicted from doing in

§ 587. Jefferson's
discussion of
treaties under the
Constitution.

any way. 4. And also to except those subjects of legislation in which it gave a participation to the House of Representatives. This last exception is denied by some on the ground that it would leave very little matter for the treaty power to work on. The less the better, say others. The Constitution thought it wise to restrain the Executive and Senate from entangling and embroiling our affairs with those of Europe. Besides, as the negotiations are carried on by the Executive alone, the subjecting to the ratification of the Representatives such articles as are within their participation is no more inconvenient than to the Senate. But the ground of this exception is denied as unfounded. For examine, e. g., the treaty of commerce with France, and it will be found that, out of thirty-one articles, there are not more than small portions of two or three of them which would not still remain as subjects of treaties, untouched by these exceptions.

The participation of the House of Representatives in the treaty-making power has been often examined since Jefferson's Manual was written. The House has in several instances taken action in carrying into effect, terminating, enforcing, and suggesting treaties (II, 1502-1505, 1520-1522), although sometimes the propriety of requesting the Executive to negotiate a treaty has been questioned (II, 1514-1517).

The exact authority of the House in the making of general treaties has been the subject of differences of opinion. In 1796 the House affirmed that when a treaty related to subjects within the power of Congress it was the constitutional duty of the House to deliberate on the expediency of carrying such treaty into effect (II, 1509); and in 1816, after a discussion with the Senate, the House maintained its position that a treaty must depend on a law of Congress for its execution as to such stipulations as relate

§ 588. General action of the House as to treaties.

§ 589. Authority of the House as to treaties in general.

§§ 590-593.

to subjects constitutionally intrusted to Congress (II, 1506). In 1868 the House's assertion of right to a voice in carrying out the stipulations of certain treaties was conceded in a modified form (II, 1508). Again, in 1871, the House asserted its prerogative (II, 1523). In 1820 and 1868 there were discussions of the House's functions as to treaties ceding or acquiring foreign territory (II, 1507, 1508), and at various other times there have been discussions of the general subject (II, 1509, 1546, 1547).

After long and careful consideration the Judiciary Committee of the House decided, in 1887, that the executive branch of the Government might not conclude a treaty affecting the revenue without the assent of the House (II, 1528-1530), and a Senate committee after examination concluded that duties were more properly regulated with the publicity of congressional action than by treaties negotiated by the President and ratified by the Senate in secrecy (II, 1532). In practice the House has acted on revenue treaties (II, 1531, 1533); and in 1880 it declared the negotiation of a revenue treaty an invasion of its prerogatives (II, 1524). At other times the subject has been discussed (II, 1525-1528, 1531, 1533).

After long discussion the House, in 1871, successfully asserted its right to a voice in approving Indian treaties (II, 1535, 1536), although in earlier times this prerogative had been jealously guarded by the Executive (II, 1534).

There have been various conflicts with the Executive over requests of the House for papers relating to treaties (II, 1509-1513, 1518, 1519, 1561).

Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded. This was accordingly the process adopted in the case of France in 1798.

Notice to a foreign government of the abrogation of a treaty is authorized by a joint resolution (V, 6270).

It has been the usage for the Executive, when it communicates a treaty to the Senate for their ratification, to communicate also the correspondence of the negotiators. This having been omitted in the case of the

§ 590. Authority of the House as to revenue treaties.

§ 591. House approves Indian treaties.

§ 592. Treaties abrogated by law.

§ 593. Procedure of the Senate as to treaties.

Prussian treaty, was asked by a vote of the House of February 12, 1800, and was obtained. And in December, 1800, the convention of that year between the United States and France, with the report of the negotiations by the envoys, but not their instructions, being laid before the Senate, the instructions were asked for and communicated by the President.

The mode of voting on questions of ratification is by nominal call.

The Senate now has rules governing its procedure on treaties.

SEC. LIII.—IMPEACHMENT.

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These are the provisions of the Constitution of the United States on the subject of impeachments. The following is a sketch of some of the principles and practices of England on the same subject:

§ 594. Jurisdiction of Lords and Commons as to impeachments.

Jurisdiction. The Lords can not impeach any to themselves, nor join in the accusation, because they are the judges. *Seld. Judic. in Parl.*, 12, 63. Nor can they proceed against a commoner but on complaint of the Commons. *Ib.*, 84. The Lords may not, by the law, try a commoner for a capital offense, on the information of the King or a private person, because the accused is entitled to a trial by his peers generally; but on accusation by the House of Commons, they may proceed against the delinquent, of whatsoever degree, and whatsoever be the nature of

§§ 595, 596.

the offense; for there they do not assume to themselves trial at common law. The Commons are then instead of a jury, and the judgment is given on their demand, which is instead of a verdict. So the Lords do only judge, but not try the delinquent. *Ib.*, 6, 7. But Wooddeson denies that a commoner can now be charged capitally before the Lords, even by the Commons; and cites Fitzharris's case, 1681, impeached of high treason, where the Lords remitted the prosecution to the inferior court. 8 *Grey's Deb.*, 325-7; 2 *Wooddeson*, 576, 601; 3 *Seld.*, 1604, 1610, 1618, 1619, 1641; 4 *Blackst.*, 25; 9 *Seld.*, 1656; 73 *Seld.*, 1604-18.

Accusation. The Commons, as the grand inquest of the nation, becomes suitors for penal justice. 2 *Wood.*, 597; 6 *Grey*, 356. The general course is to pass a resolution containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him by oral accusation, at the bar of the House of Lords, in the name of the Commons. The person signifies that the articles will be exhibited, and desires that the delinquent may be sequestered from his seat, or be committed, or that the peers will take order for his appearance. *Sachev. Trial*, 325; 2 *Wood.*, 602, 605; *Lords' Journ.*, 3 June, 1701; 1 *Wms.*, 616; 6 *Grey*, 324.

In the House of Representatives there are various methods of setting an impeachment in motion: by charges made on the floor on the responsibility of a Member or Delegate (III, 2342, 2400, 2469, 1303); by charges preferred by a memorial, which is usually referred to a committee for examination (III, 2364, 2491, 2494, 2496, 2499, 2515); by a message from the

§ 596. Inception of impeachment proceedings in the House.

President (III, 2294, 2319); by charges transmitted from the legislature of a State (III, 2469) or Territory (III, 2487) or from a grand jury (III, 2488); or from facts developed and reported by an investigating committee of the House (III, 2399, 2444).

A direct proposition to impeach is a question of high privilege in the House and at once supersedes business otherwise in order under the rules governing the order of business (III, 2045-2048). It may not even be superseded by an election case, which is also a matter of high privilege (III, 2581). It does not lose its privilege from the fact that a similar proposition has been made at a previous time during the same session of Congress (III, 2408), previous action of the House not affecting it (III, 2053). So, also, propositions relating to an impeachment already made are privileged (III, 2400, 2402, 2410); but a resolution simply proposing an investigation, even though impeachment may be a possible consequence, is not privileged (III, 2050, 2546). But where a resolution of investigation positively proposes impeachment or suggests that end, it has been admitted as of privilege (III, 2051, 2052, 2401, 2402).

The impeachment having been made on the floor by a Member (III, 2342, 2400), or charges suggesting impeachment having been made by memorial (III, 2495, 2520, 2516) or even appearing through common fame (III, 2385, 2506), the House has at times ordered an investigation at once. At other times it has refrained from ordering investigation until the charges had been examined by a committee (III, 2364, 2488, 2491, 2492, 2494, 2504, 2513).

The House has always examined the charges by its own committee before it has voted to impeach (III, 2294, 2487, 2501). This committee has sometimes been a select committee (III, 2342, 2487, 2494), sometimes a standing committee (III, 2400, 2409). In some instances the committee has made its inquiry *ex parte* (III, 2511, 2319, 2343, 2366, 2385, 2403, 2496); but in the later practice the sentiment of committees has been in favor of permitting the accused to explain, present witnesses, cross-examine (III, 2445, 2471, 2518), and be represented by counsel (III, 2470, 2501, 2511, 2516).

Its committee on investigation having reported, the House may vote the impeachment (III, 2367, 2412), and, after having notified the Senate by message (III, 2413, 2446), may direct the impeachment to be presented at the bar of the Senate by a single Member (III, 2294), or by two (III, 2319, 2343, 2367), or even five Members (III, 2445). These Members in one notable case represented the majority party alone, but ordinarily include

§ 597. A proposition to impeach a question of privilege.

§ 598. Investigation of impeachment charges.

§ 599. Procedure of committee in investigating.

§ 600. Impeachment carried to the Senate.

§§ 601, 602.

representation of the minority party (III, 2445, 2472, 2505). The chairman of the committee impeaches at the bar of the Senate by oral accusation (III, 2413, 2446, 2473), and requests that the Senate take order as to appearance; but in only one case has the parliamentary law as to sequestration and committal been followed (III, 2118, 2296), later inquiry resulting in the conclusion that the Senate had no power to take into custody the body of the accused (III, 2324, 2367). Having delivered the impeachment the committee return to the House and report verbally (III, 2413, 2446).

Process. If the party do not appear, proclamations are to be issued, giving him a day to appear. On their return they are strictly examined. If any error be found in them, a new proclamation issues, giving a short day. If he appear not, his goods may be arrested, and they may proceed. *Seld. Jud.*, 98, 99.

§ 601. The writ of summons for appearance of respondent.

The managers for the House of Representatives attend in the Senate after the articles have been exhibited and demand that process issue for the attendance of respondent (III, 2451, 2478), after which they return and report verbally to the House (III, 2423, 2451). The Senate thereupon issue a writ of summons, fixing the day of return (III, 2423, 2451); and in a case wherein the respondent did not appear by person or attorney the Senate published a proclamation for him to appear (III, 2393). But the respondent's goods were not attached.

Articles. The accusation (articles) of the Commons is substituted in place of an indictment. Thus, by the usage of Parliament, in impeachment for writing or speaking, the particular words need not be specified. *Sach. Tr.*, 325; 2 *Wood.*, 602, 605; *Lords' Journ.*, 3 June, 1701; 1 *Wms.*, 616.

§ 602. Exhibition and form of articles.

The House of Representatives exhibits its articles after the impeachment has been carried to the bar of the Senate. The managers, who are elected by the House (III, 2300, 2345, 2417, 2448) or appointed by the Speaker (III, 2388, 2475), carry the articles in obedience to a resolution

of the House (III, 2417, 2419, 2448) to the bar of the Senate (III, 2420, 2449, 2476), the House having previously informed the Senate (III, 2419, 2448) and received a message informing them of the readiness of the latter body to receive the articles (III, 2078, 2325, 2345). Having exhibited the articles the managers return and report verbally to the House (III, 2449, 2476). The articles in the Belknap impeachment were held sufficient, although attacked for not describing the respondent as one subject to impeachment (III, 2123). These articles are signed by the Speaker and attested by the Clerk (III, 2302, 2449), and in form approved by the practice of the House (III, 2420, 2449, 2476).

Appearance. If he appear, and the case be capital, he answers in custody; though not if the accusation be general. He is not to be committed but on special accusations. If it be for a misdemeanor only, he answers, a lord in his place, a commoner at the bar, and not in custody, unless, on the answer, the Lords find cause to commit him, till he finds sureties to attend, and lest he should fly. *Seld. Jud.*, 98, 99. A copy of the articles is given him, and a day fixed for his answer. *T. Ray.*; 1 *Rushw.*, 268; *Fost.*, 232; 1 *Clar. Hist. of the Reb.*, 379. On a misdemeanor, his appearance may be in person, or he may answer in writing, or by attorney. *Seld. Jud.*, 100. The general rule on accusation for a misdemeanor is, that in such a state of liberty or restraint as the party is when the Commons complain of him, in such he is to answer. *Ib.*, 101. If previously committed by the Commons, he answers as a prisoner. But this may be called in some sort *judicium parium suorum*. *Ib.* In misdemeanors the party has a right to counsel by the

§ 603. Parli-
mentary law as to
appearance of
respondent.

§§ 604, 605.

common law, but not in capital cases. *Seld. Jud.*, 102, 105.

§ 604. Requirements of the Senate as to appearance of respondent.

This paragraph of the parliamentary law is largely obsolete so far as the practice of the House of Representatives and the Senate are concerned. The accused may appear in person or by attorney (III, 2127, 2349, 2424), or he may not appear at all (III, 2307, 2333, 2393). In case he does not appear the House does not ask that he be compelled to appear (III, 2308), but the trial proceeds as on a plea of "not guilty." It has been decided that the Senate has no power to take into custody the body of the accused (III, 2324, 2367). The writ of summons to the accused recites the articles and notifies him to appear at a fixed time and place and file his answer (III, 2127). In all cases respondent may appear by counsel (III, 2129), and in one trial, when a petition set forth that respondent was insane, the counsel of his son was admitted to be heard and present evidence in support of the petition, but not to make argument (III, 2333).

§ 605. Answer of respondent.

Answer. The answer need not observe great strictness of form. He may plead guilty as to part, and defend as to the residue; or, saving all exceptions, deny the whole or give a particular answer to each article separately. 1 *Rush.*, 274; 2 *Rush.*, 1374; 12 *Parl. Hist.*, 442; 3 *Lords' Journ.*, 13 Nov., 1643; 2 *Wood.*, 607. But he cannot plead a pardon in bar to the impeachment. 2 *Wood.*, 615; 2 *St. Tr.*, 735.

The answer of the President took up the articles one by one, denying some of the charges, admitting others but denying that they set forth impeachable offenses, and excepting to the sufficiency of others (III, 2428). The form of this answer was commented on during preparation of the replication in the House (III, 2431). Blount and Belknap demurred to the charges on the ground that they were not civil officers within the meaning of the Constitution (III, 2310, 2453), and Swayne also raised questions as to the jurisdiction of the Senate (III, 2481). The answer is part of the pleadings, and exhibits in the nature of evidence may not properly be attached thereto (III, 2124).

Replication, rejoinder, &c. There may be a replication, rejoinder, &c. *Seld. Jud.*, 114; § 606. Other pleadings. 8 *Grey's Deb.*, 233; *Sach. Tr.*, 15; *Journ. H. of Commons*, 6 March, 1640-1.

A replication is always filed, and in one instance the pleadings proceeded to a rejoinder, surrejoinder, and similiter (III, 2455). A respondent has also filed a protest instead of pleading on the merits (III, 2461), but there was objection to this and the Senate barely permitted it. In another case respondent interposed a plea as to jurisdiction of offenses charged in certain articles, but declined to admit that it was a demurrer with the admissions pertinent thereto (III, 2125, 2431). In the Belknap trial the House was sustained in averring in pleadings as to jurisdiction matters not averred in the articles (III, 2123). The right of the House to allege in the replication matters not touched in the articles has been discussed (III, 2457).

Witnesses. The practice is to swear the witnesses in open House, and then examine them there; or a committee may be named, who shall examine them in committee, either on interrogatories agreed on in the House, or such as the committee in their discretion shall demand. *Seld. Jud.*, 120, 123.

In trials before the Senate witnesses have always been examined in open Senate, and never by a committee, although such procedure has been once suggested (III, 2217).

Jury. In the case of Alice Pierce, 1 *R.*, 2, a jury was impaneled for her trial before a committee. *Seld. Jud.*, 123. But this was on a complaint, not on impeachment by the Commons. *Seld. Jud.*, 163. It must also have been for a misdemeanor only, as the Lords spiritual sat in the case, which they do on misdemeanors, but not in capital cases. *Id.*, 148. The

§ 607. Examination of witnesses.

§ 608. Relation of jury trial to impeachment.

judgment was a forfeiture of all her lands and goods. *Id.*, 188. This, Selden says, is the only jury he finds recorded in Parliament for misdemeanors; but he makes no doubt, if the delinquent doth put himself on the trial of his country, a jury ought to be impaneled, and he adds that it is not so on impeachment by the Commons, for they are in loco proprio, and there no jury ought to be impaneled. *Id.*, 124. The *Ld. Berkeley*, 6 *E.*, 3, was arraigned for the murder of L. 2, on an information on the part of the King, and not on impeachment of the Commons; for then they had been patria sua. He waived his peerage, and was tried by a jury of Gloucestershire and Warwickshire. *Id.*, 126. In 1 *H.*, 7, the Commons protest that they are not to be considered as parties to any judgment given, or hereafter to be given in Parliament. *Id.*, 133. They have been generally and more justly considered, as is before stated, as the grand jury; for the conceit of Selden is certainly not accurate, that they are the patria sua of the accused, and that the Lords do only judge, but not try. It is undeniable that they do try; for they examine witnesses as to the facts, and acquit or condemn, according to their own belief of them. And Lord Hale says, "the peers are judges of law as well as of fact;" 2 *Hale*, *P. C.*, 275; consequently of fact as well as of law.

No jury trial is possible as part of an impeachment trial under the Constitution (III, 2313).

Presence of Commons. The Commons are to be present at the examination of witnesses. *Seld. Jud.*, 124. Indeed, they are to attend throughout, either as a committee of the whole House, or otherwise, at discretion, appoint managers to conduct the proofs. *Rushw. Tr. of Straff.*, 37; *Com. Journ.*, 4 Feb., 1709-10; 2 Wood, 614. And judgment is not to be given till they demand it. *Seld. Jud.*, 124. But they are not to be present on impeachment when the Lords consider of the answer or proofs and determine of their judgment. Their presence, however, is necessary at the answer and judgment in cases capital *Id.*, 58, 158 as well as not capital; 162. * * *

§ 610. Attendance of the House of Representatives. The House of Representatives has consulted its own inclination and convenience about attending its managers at an impeachment. It did not attend at all in the trials of Blount, Swayne, and Archbald (III, 2318, 2483); and after attending at the answer of Belknap, decided that it would be represented for the remainder of the trial by its managers alone (III, 2453). At the trial of the President the House, in Committee of the Whole, attended throughout the trial (III, 2427), but this is exceptional. In the Peck trial the House discussed the subject (III, 2377) and reconsidered its decision to attend the trial daily (III, 2028). While the Senate is deliberating the House does not attend (III, 2435); but when the Senate votes on the charges, as at the other open proceedings of the trial, it may attend (III, 2338, 2383, 2440). While it has frequently attended in Committee of the Whole, it may attend as a House (III, 2338).

* * * The Lords debate the judgment among themselves. Then the vote is first taken on the question of guilty or not guilty; and if they convict, the question, or particular sentence, is out of that which seemeth

§ 611. Voting on the articles in an impeachment trial.

§ 612.

to be most generally agreed on. *Seld. Jud.*, 167; 2 *Wood.*, 612.

The question in judgment in an impeachment trial has occasioned contention in the Senate (III, 2339, 2340), and in the trial of the President the form was left to the Chief Justice (III, 2438, 2439). In the Belknap trial there was much deliberation over this subject (III, 2466). In the Chase trial the Senate modified its former rule as to form of final question (III, 2363). The yeas and nays are taken on each article separately (III, 2098, 2339), but in the trial of the President the Senate, by order, voted on the articles in an order differing from the numerical order (III, 2440), adjourned after voting on one article (III, 2441), and adjourned without day after voting on three of the eleven articles (III, 2443). After a conviction the Senate votes on the punishment (III, 2339, 2397).

Judgment. Judgments in Parliament, for death, have been strictly guided per legem terræ, which they can not alter; and not at all according to their discretion. They can neither omit any part of the legal judgment nor add to it. Their sentence must be secundum non ultra legem. *Seld. Jud.*, 168, 171. This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevailed; for impeachments are not framed to alter the law, but to carry it into more effectual execution against too powerful delinquents. The judgment, therefore, is to be such as is warranted by legal principles or precedents. 6 *Sta. Tr.*, 14; 2 *Wood.*, 611. The Chancellor gives judgment in misdemeanors; the Lord High Steward formerly in cases of life and death. *Seld. Jud.*, 180. But now the Steward is deemed not necessary. *Fost.*,

§ 612. Judgment in
Impeachments.

144; 2 Wood., 613. In misdemeanors the greatest corporal punishment hath been imprisonment. *Seld. Jud.*, 184. The King's assent is necessary to capital judgments (but 2 Wood., 614, contra), but not in misdemeanors. *Seld. Jud.*, 136.

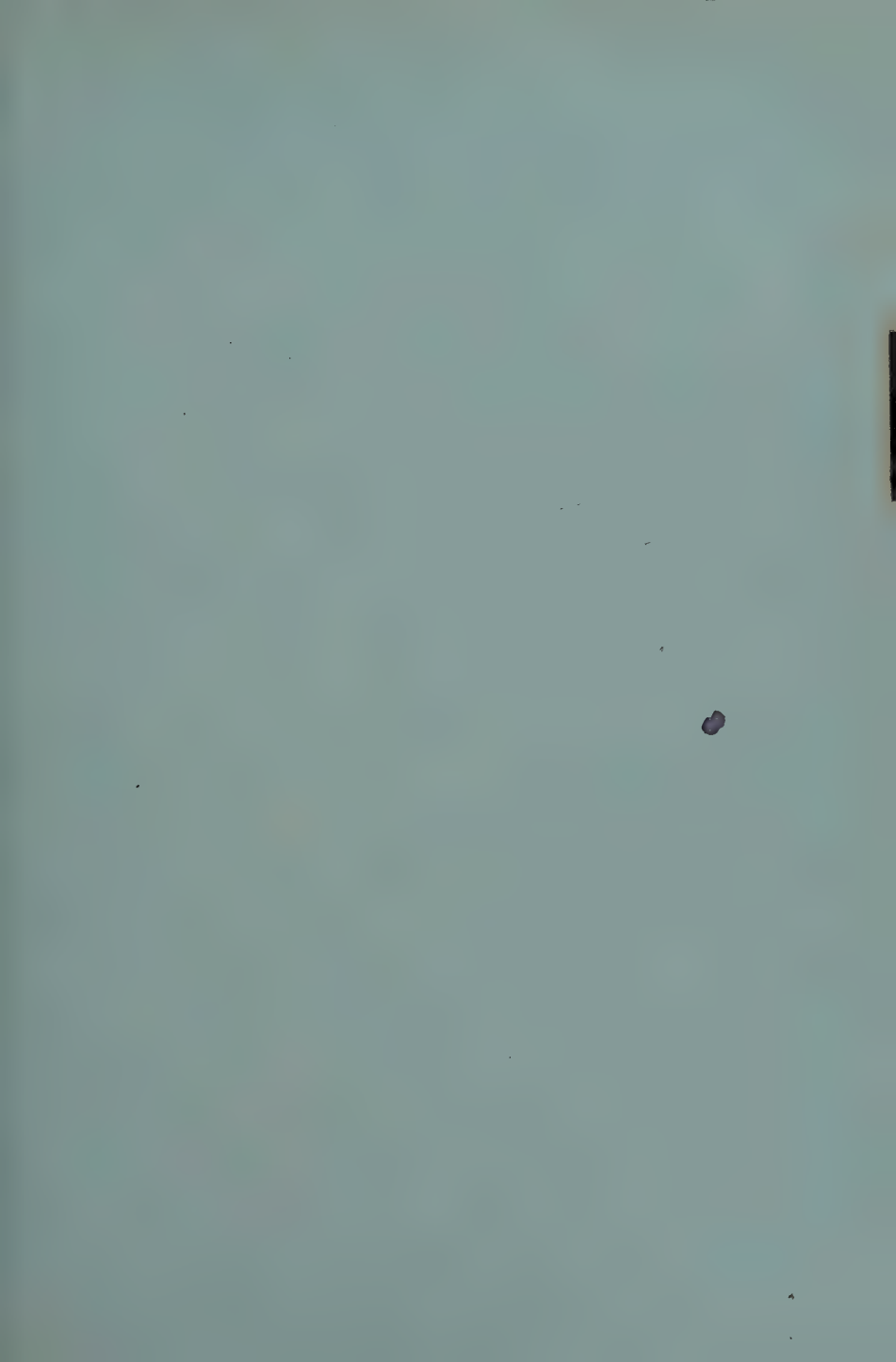
The Constitution of the United States (Art. I, sec. 3, par. 7) limits the judgment to removal and disqualification.

Continuance. An impeachment is not discontinued by the dissolution of Parliament, but may be resumed by the new Parliament. *T. Ray* 383; 4 *Com. Journ.*, 23 Dec., 1790; *Lords' Jour.*, May 15, 1791; 2 Wood., 618.

§ 613. Impeachment not interrupted by adjournments.

In Congress impeachment proceedings are not discontinued by a recess (III, 2299, 2304, 2344, 2375, 2407, 2505); and the Pickering impeachment was presented in the Senate on the last day of the Seventh Congress (III 2320); and at the beginning of the Eighth Congress the proceedings went on from that point (III, 2321). But an impeachment may proceed only when Congress is in session (III. 2006, 2462).





RULES OF THE HOUSE OF REPRESENTATIVES

WITH

NOTES AND ANNOTATIONS.

RULES OF THE HOUSE OF REPRESENTATIVES, WITH
NOTES AND ANNOTATIONS.

RULE I.

DUTIES OF THE SPEAKER.

1. The Speaker shall take the chair on every legislative day precisely at the hour to which the House shall have adjourned at the last sitting, immediately call the Members to order, and on the appearance of a quorum, cause the Journal of the proceedings of the last day's sitting to be read, having previously examined and approved the same.

§ 614. Calling the House to order; and reading of the Journal.

This rule was adopted in 1789 and perfected in 1811 and 1824 (II, 1310). The hour of meeting is usually 12 m., fixed by standing order (I, 104-109, 116, 117; IV, 4325). Immediately after the Members are called to order prayer is offered by the Chaplain (IV, 3056). The presence of a quorum is ascertained if a question be raised (IV, 2733); and after the raising of the question the reading of the Journal must await the ascertainment (IV, 2732, 2927). The reading of the Journal may not be dispensed with except by unanimous consent or a motion or other action to suspend the rules (IV, 2747-2750); but the Journal of the last day of a session is not read on the first day of the next session (IV, 2742). Business is not transacted before the reading (IV, 2751-2756), but the simple motion to adjourn is admitted (IV, 2757) and a Member may be sworn in (I, 172). The reading may not be interrupted, even by business so highly privileged as a conference report (V, 6443; Rule XXVIII); nor may a conference report be considered before the Journal is read (Speaker Clark, Jan. 23, 1913, p. 1921, 3d sess. 62d Cong.); but in cases of disorder the reading is suspended (II, 1630; IV, 2759). The Speaker's examination and approval of the Journal is preliminary to the reading, and does not preclude subsequent amendment and approval by the House itself (IV, 2734-2738).

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 615-617.

Rule I.

§ 615. Speaker preserves order on floor and in galleries and lobby.

2. He shall preserve order and decorum, and, in case of disturbance or disorderly conduct in the galleries, or in the lobby, may cause the same to be cleared.

This rule was adopted in 1789 and amended in 1794 (II, 1343).

The Speaker may name a Member who is disorderly, but may not, of his own authority, censure or punish him (II, 1344, 1345). In cases of extreme disorder in Committee of the Whole the Speaker has taken the chair and restored order without a formal rising of the committee (II, 1348, 1648-1653, 1657). In an early instance the Speaker ordered the arrest of a person in the gallery; but this exercise of power was questioned (II, 1605).

3. He shall have general control, except as provided by rule or law, of the Hall of the House, and of the corridors and passages and the disposal of the unappropriated rooms in that part of the Capitol assigned to the use of the House, until further order.

§ 616. Speaker's control of the Hall, corridors, and rooms.

This rule was adopted in 1811 and amended in 1824 and 1885 (II, 1354), and April 5, 1911.

Control of the appropriated rooms in the House portion of the Capitol is exercised by the House itself (V, 7273-7279), but repairs and alterations have been authorized by statute (V, 7280-7281).

4. He shall sign all acts, addresses, joint resolutions, writs, warrants, and subpœnas of, or issued by order of, the House, and decide all questions of order, subject to an appeal by any Member, on which appeal no Member shall speak more than once, unless by permission of the House.

§ 617. Speaker's signature to acts, warrants, subpœnas, etc.; and decision of questions of order subject to appeal.

The portion of this rule relating to decisions on points of order was adopted in 1789 and amended in 1811; and the portion relating to the signing of acts, etc., was adopted in 1794 (II, 1313).

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule I.

§§ 618-620.

Enrolled bills are signed first by the Speaker (IV, 3429). He declines to sign in the absence of a quorum (IV, 3458), or pending a motion to reconsider (V, 5705); and the report of a committee as to the accuracy of the enrollment is first submitted, unless, as in rare instances only, the House by consent waives the requirement (IV, 3452). In cases of error the House has permitted the Speaker's signature to be vacated (IV, 3453, 3455-3457).

Warrants, subpoenas, etc., during recesses of Congress are signed only by authority specially given (III, 1753, 1763, 1806). The issuing of warrants must be specially authorized by the House (I, 287). The Speaker also signs the articles, replications, etc., in impeachments (III, 2370, 2455); and certifies cases of contumacious witnesses for action by the courts (III, 1691, 1769).

The Speaker may require that a question of order be presented in writing

§ 619. Signing of warrants, subpoenas, etc.
 § 620. Practice governing the Speaker in deciding points of order.

(V, 6865). He is not required to decide a question not directly presented by the proceedings (II, 1314). Debate being for his information, is within his discretion (V, 6919, 6920). He is constrained to give precedent its proper influence (II, 1317); and his decisions may be reexamined and reversed (IV, 4637). Preserving the authority and binding force of parliamentary law is as much the duty of each Member of the House as it is the duty of the Chair. (Speaker Gillett, Jan. 3, 1923, 67th Cong., 4th sess., p. 1205.) They are recorded in the Journal (IV, 2840, 2841), but responses to parliamentary inquiries are not so recorded (IV, 2842). Questions arising during a division are decided peremptorily (V, 5926), and when they arise out of any other question must be decided before that question (V, 6864). The Speaker may recognize and respond to a parliamentary inquiry although the previous question may have been demanded. (Speaker pro tem. Snell, Mar. 27, 1926, 69th Cong., 1st sess., p. 6469.) In rare instances the Speaker declines to rule until he has taken time for examination of the question (III, 2725). He rarely submits a question directly to the House for its decision (IV, 3173, 3282, 4930; V, 5014, 5323, 6701; Speaker Cannon, Mar. 17, 1910; Speaker Longworth, Apr. 8, 1926, p. 7148), or of his own initiative raises and submits a question (II, 1277, 1315, 1316). Even as to questions of privilege he usually, in later practice, makes a preliminary decision instead of submitting the question directly to the House (III, 2648, 2649, 2650, 2654, 2678). He does not decide on the legislative effect of propositions (II, 1274, 1323, 1324), or on the consistency of proposed action with other acts of the House (II, 1327-1336), or on the constitutional powers of the House (II, 1255, 1318-1320, 1490; IV, 3507), or on the propriety or expediency of a proposed course of action (II, 1275, 1325, 1326, 1337; IV, 3091-3093, 3127). He passes on the validity of conference reports (V, 6409, 6410, 6414-6416), but not on the sufficiency of the accompanying statements as distinguished from the form (V, 6511-6513), or on question of whether conference report violates instructions of the House (V, 6395; Speaker Clark, Dec. 22, 1913, 63d Cong., 2d sess., p. 1430). As to reports of committees, he does not decide as to their sufficiency (II, 1339; IV, 4653), or usually as to whether or not the commit-

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 621-624.

Rule I.

tee have followed instructions (II, 1338; IV, 4404, 4689); or on matters arising in Committee of the Whole (63d Cong., 3d sess., p. 358); but he has decided as to the validity of the authorization of a report (IV, 4592, 4593).

The right of appeal insures the House against the arbitrary control of the Speaker and can not be taken away from the House (V, 6002); but appeals may not be entertained from responses to parliamentary inquiries (V, 6002). The Speaker may vote to sustain his own decision (IV, 4569; V, 5686, 6956, 6957).

The appeal may be debated. Debate on appeal in Committee of the Whole is under the five-minute rule. (Chairman Crisp, Jan. 29, 1919, p. 2324.) In practice a Member favorable to the ruling usually moves to lay the appeal on the table, thus shutting off debate. A motion to postpone an appeal has been held in order (61st Cong., 2d sess., p. 3247).

5. He shall rise to put a question, but may state it sitting; and shall put questions in this form, to wit: "As many as are in favor (as the question may be), say Aye;" and after the affirmative voice is expressed, "As many as are opposed, say No;" if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative; if he still doubts, or a count is required by at least one-fifth of a quorum, he shall name one from each side of the question to tell the Members in the affirmative and negative; which being reported, he shall rise and state the decision.

This rule was adopted in 1789, with revision and amendment in 1860 and 1880 (II, 1311).

One of the suppositions on which the parliamentary law is founded is that the Speaker will not betray his duty to make an honest count on a division (V, 6002).

In a full House (total membership of 435), tellers are ordered by 44; in Committee of the Whole by 20.

It is the duty of the Member to serve as teller when appointed by the Chair (V, 5987); but when Members of one side have declined, the second teller has been appointed from the other side (V, 5988) or the position has been left vacant (V, 5989). A Delegate may be appointed teller (II, 1302). Where there is a doubt as to the count by tellers the

§ 622. Putting of the question by the Speaker.

§ 623. Voting viva voce, by division, and by tellers.

§ 624. Ordering of tellers and taking of the vote.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule I.

§§ 625-627.

Chair may order the vote taken again (V, 5991), but this must be done before he has announced the result (V, 5993-5995).

6. He shall not be required to vote in ordinary legislative proceedings, except where his vote would be decisive, or where the House is engaged in voting by ballot; and in cases of a tie vote the question shall be lost.

This rule was adopted in 1789, with amendment in 1850 (V, 5964), and 1911. The Speaker's name is not on the roll from which the yeas and nays are called (V, 5970) and is not called unless on his request. It is then called at the end of the roll (V, 5965), the Clerk calling him by name. The duty of giving a decisive vote may be exercised after the intervention of other business, or after the announcement of the result or on another day, if a correction of the roll shows a condition wherein his vote would be decisive (V, 5969, 6061-6063); and he also exercises the right to withdraw his vote in case a correction shows it to have been unnecessary (V, 5971). The Speakers have the same rights as other Members to vote (V, 5966, 5967) but rarely exercise it (V, 5964, footnote). The Chair may be counted on a vote by tellers (V, 5996, 5997).

7. He shall have the right to name any Member to perform the duties of the Chair, but such substitution shall not extend beyond three legislative days: *Provided, however,* That in case of his illness, he may make such appointment for a period not exceeding ten days, with the approval of the House at the time the same is made; and in his absence and omission to make such appointment, the House shall proceed to elect a Speaker pro tempore to act during his absence.

This rule was adopted in 1811, and amended in 1876 (II, 1377), and in 1920: The right of the House to elect a Speaker pro tempore in the absence of the Speaker was exercised before the rule was adopted (II, 1405), although the House sometimes preferred to adjourn (I, 179). An elected Speaker pro tempore is not sworn (I, 229; II, 1386); but the Senate and sometimes the President are notified of his election (II, 1386-1389, 1405-1412).

§ 627. Election, oath, and designation of Speaker pro tempore.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 628, 629.

Rule II.

He signs enrolled bills and appoints committees, functions not exercised by a Speaker pro tempore by designation (II, 1399, 1400, 1404) unless the designation has been approved by the House. A call of the House may take place with a Speaker pro tempore in the chair (IV, 2989), and the Speaker pro tempore may issue his warrant for the arrest of absent members under a call of the House (Oct. 7, 1913, p. 5498, 1st sess., 63d Cong.). When the Speaker is not present at the opening of a session, he designates a Speaker pro tempore in writing (II, 1378, 1401), but he does not always name in open House the Member whom he calls to the chair temporarily during the day's sitting (II, 1379, 1400). A Speaker pro tempore sometimes designates another Speaker pro tempore (II, 1384). Members of the minority have been called to the chair on occasions of ceremony (II, 1383), but in rare instances on other occasions (II, 1382, 1390; IV, 2596).

RULE II.

ELECTION OF OFFICERS.

There shall be elected by a viva voce vote, at the commencement of each Congress, to continue in office until their successors are chosen and qualified, a Clerk, Sergeant-at-Arms, Doorkeeper, Postmaster, and Chaplain, each of whom shall take an oath to support the Constitution of the United States, and for the true and faithful discharge of the duties of his office to the best of his knowledge and ability, and to keep the secrets of the House; and each shall appoint all of the employees of his department provided for by law.

§ 628. Election of officers.

§ 629. Oath and duties of officers.

A rudimentary form of this rule was adopted in 1789, and was amended several times prior to 1880, when it assumed its present form (I, 187). The House having discarded a theory that the rules might be imposed by one House on its successor (V, 6743-6745), it follows that this rule is not operative at the organization. The House, by order or usage, elects its Speaker viva voce (I, 204, 208); but the officers mentioned in the rule are usually chosen by resolution, which is not a viva voce election. (I, 193,

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule III.

§§ 630, 631.

194). The act of 1789 provides that the oath of office shall be administered to the Speaker by any Member and by the Speaker to the Clerk (I, 130). The Speaker also at the same time administers the oath to the other elective officers (I, 81). The Member of longest continuous service administers the oath to the Speaker (I, 131). However, in the later practice the Speaker has selected the Member to administer the oath. The requirement that the officers be sworn to keep the secrets of the House is obsolete (I, 187).

The House has declined to interfere with the Clerk's power of removing his subordinates (I, 249). Employees under the Clerk and other officers are to be assigned only to the duties for which they are appointed (V, 7232).

RULE III.

DUTIES OF THE CLERK.

1. The Clerk shall, at the commencement of the first session of each Congress, call the Members to order, proceed to call the roll of Members by States in alphabetical order, and, pending the election of a Speaker or Speaker pro tempore, preserve order and decorum, and decide all questions of order subject to appeal by any Member.

§ 630. Clerk's
duties at
organization.

This rule was framed in 1880, on a basis furnished by a rule of 1860 (I, 64), and amended in 1911.

As rules are not usually adopted until after the election of Speaker, this rule is not in force at the time of organization of a new House.

The procedure at organization is, however, according to a practice conforming to the terms of the rule (I, 81).

While the Speaker ceases to be an officer of the House with the expiration of a Congress, the Clerk, by old usage, continues in a new Congress (I, 187, 188, 235, 244).

The roll of Members is made up by the Clerk from the credentials, in accordance with a provision of law (I, 14-62). The call of the roll may not be interrupted, especially by one not on that roll (I, 84), and a person not on the roll may not be recognized (I, 86). A motion to proceed to the election of Speaker is of higher privilege than a motion to correct the roll (I, 19-24). The House has declined to permit enrollment by the Clerk to be final as to prima facie right (I, 376, 589, 592).

§ 631. The roll of
Members-elect.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 632-634.

Rule III.

The Clerk, in presiding before the election of Speaker, recognizes Members (I, 74).

The Members-elect have, before the election of Speaker or adoption of rules, authorized the Clerk and Sergeant-at-Arms of the last House to preserve order (I, 101); but usually such action has not been taken, although an occasion might arise to make it necessary (I, 76, 77).

In early years the authority of the Clerk to decide questions of order pending the election of a Speaker was questioned (I, 65), and the Clerks often declined to make decisions (I, 68-72; V, 5325), although in 1855 occur exceptions to this theory (I, 91). But in 1860 the provisions of the present rule were adopted (I, 64), with a further rule that the rules of one House should apply in the organization of its successor (V, 6743-6747); and under this arrangement the Clerks have made rulings (I, 76, 77). In 1890 the theory that the rules of one House may be made binding on its successor was overthrown (V, 6747). In a case of vacancy arising after the adoption of rules, this rule would be operative and conclude questions as to the Clerk's authority.

2. He shall make and cause to be printed and delivered to each Member, or mailed to his address, at the commencement of every regular session of Congress, a list of the reports which it is the duty of any officer or Department to make to Congress, referring to the act or resolution and page of the volume of the laws or Journal in which it may be contained, and placing under the name of each officer the list of reports required of him to be made.

§ 633. Clerk
furnishes a list of
reports.

This rule was adopted in 1822 (I, 252).

3. He shall note all questions of order, with the decisions thereon, the record of which shall be printed as an appendix to the Journal of each session; and complete, as soon after the close of the session as possible, the

§ 634. Clerk's
duty as to
Journal and
documents.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule III.

§§ 635-639.

printing and distribution to Members and Delegates of the Journal of the House, together with an accurate and complete index; retain in the library at his office, for the use of the Members and officers of the House, and not to be withdrawn therefrom, two copies of all the books and printed documents deposited there; send, at the end of each session, a printed copy of the Journal thereof to the executive and to each branch of the legislature of every State and Territory; preserve for and deliver or mail to each Member and Delegate an extra copy, in good binding, of all documents printed by order of either House of the Congress to which he belonged; attest and affix the seal of the House to all writs, warrants,

§ 635. Attests and seals warrants, subpoenas, etc.

§ 636. Certifies passage of bills.

§ 637. Makes contracts.

and subpoenas issued by order of the House, certify to the passage of all bills and joint resolutions, make or approve all contracts, bargains, or agreements relative to furnishing any matter or thing, or for the perform-

ance of any labor for the House of Representatives, in pursuance of law or order of the House, keep full

§ 638. Keeps contingent and stationery accounts.

and accurate accounts of the disbursements out of the contingent fund of the House, keep the stationery account

§ 639. Pays officers and employees.

of Members and Delegates, and pay them as provided by law. He shall

pay to the officers and employees of the House of Representatives, on the first day of each month, the amount of their salaries that shall be due them; and

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 639A, 640.

Rule IV.

when the first day of the month falls on Sunday he shall pay them on the day next preceding.

4. He shall, in case of temporary absence or disability, designate the Chief Clerk, or some other official in his office, to sign all papers that may require the official signature of the Clerk of the House, and to do all other acts, except such as are provided for by statute, that may be required under the rules and practice of the House to be done by the Clerk. Such official acts, when so done by the Chief Clerk or other official, shall be under the name of the Clerk of the House. The said designation shall be in writing, and shall be laid before the House and entered on the Journal.

In 1880 several rules, adopted at different periods from 1794 to 1846, were consolidated into this rule; which was amended also in 1892 (I, 251). Section 4 was adopted January 18, 1912, Sixty-second Congress, second session.

Various other administrative duties, similar to those specified in this rule, are imposed on the Clerk by law (I, 253); and the law also makes it his duty to furnish stationery, blank books, etc., to the committees and officers of the House (V, 7322); to exercise discretionary authority as to reprinting of bills and documents (V, 7319); to certify to the compensation of Members during recesses of Congress (I, 1156); and to receive and print the testimony taken in election contests (I, 703, 705).

RULE IV.

DUTIES OF THE SERGEANT-AT-ARMS.

1. It shall be the duty of the Sergeant-at-Arms to attend the House during its sittings, to maintain order under the direction of the Speaker or Chairman, and, pending

§ 640. Sergeant-at-Arms enforces authority of House.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule V.

§§ 641-643.

the election of a Speaker or Speaker pro tempore, under the direction of the Clerk; execute the commands of the House, and all processes issued by authority thereof, directed to him by the Speaker; keep the accounts for the pay and mileage of Members and Delegates, and pay them as provided by law.

§ 641. Disburses
pay and mileage
of Members.

This rule was adopted in 1789, with additions and amendments in 1838, 1877, 1890 (I, 257), and April 5, 1911.

At the organization of the House in a new Congress the election of Speaker occurs before the adoption of rules. Therefore this rule is not in force at that time, and in case of necessity a special rule may be adopted conferring the authority, as was done in 1849 and 1859 (I, 101, 102).

Duties are imposed on the Sergeant-at-Arms by law (I, 258): Control of Capitol police; and the making up of the roll of Members-elect in case of vacancy in the office of Clerk, or the absence or disability of that officer.

§ 642. The mace
the symbol of
the Sergeant-at-
Arms' office.

2. The symbol of his office shall be the mace, which shall be borne by him while enforcing order on the floor.

This rule was adopted in 1789 (II, 1346). An attempt to enforce order without the mace gave rise to a question of privilege (II, 1347).

RULE V.

DUTIES OF THE DOORKEEPER.

1. The Doorkeeper shall enforce strictly the rules relating to the privileges of the Hall and be responsible to the House for the official conduct of his employees.

§ 643. General
duties of the
Doorkeeper.

This rule was adopted in 1838, and amended in 1880 (I, 260).

The law also requires of the Doorkeeper certain administrative duties (I, 262): Care of the apartments occupied by the House; custody of furniture, books, etc.; charge of the documents in the folding and document rooms; supervision of janitor service; and the making of the roll of Members-elect in case the Clerk and Sergeant-at-Arms are unable to perform the duty.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 644-646.

Rule VI.

When a message is received by the House, the Doorkeeper introduces the bearer thereof (V, 6591).

2. At the commencement and close of each session of Congress he shall take an inventory of all the furniture, books, and other public property in the several committee and other rooms under his charge, and report the same to the House, which report shall be referred to the Committee on Accounts to ascertain and determine the amount for which he shall be held liable for missing articles.

§ 644. Doorkeeper the custodian of furniture, books, etc.

This rule was adopted in 1865, and amended in 1880 (I, 261).

3. He shall allow no person to enter the room over the hall of the House during its sittings; and fifteen minutes before the hour of the meeting of the House each day he shall see that the floor is cleared of all persons except those privileged to remain, and kept so until ten minutes after adjournment.

§ 645. The Doorkeeper clears the floor of unauthorized persons.

This rule was adopted in 1869, with amendments in 1880 and 1890 (V, 7295).

RULE VI.

DUTIES OF THE POSTMASTER.

The Postmaster shall superintend the post-office kept in the Capitol and House Office Building for the accommodation of Representatives, Delegates, and officers of the House, and be held responsible for the prompt and safe delivery of their mail.

§ 646. The Postmaster superintends the House post-office.

This rule was adopted in 1838, with amendment in 1880 (I, 270). The law requires the Postmaster to account at the first of each regular session for the government property in his possession (I, 271).

RULES OF THE HOUSE OF REPRESENTATIVES.

Rules VII, VIII.

§§ 647-650.

RULE VII.

DUTIES OF THE CHAPLAIN.

The Chaplain shall attend at the commencement of each day's sitting of the House and open the same with prayer.

§ 647. Duties of the Chaplain.

This rule was adopted in 1880 (I, 272), but the sessions of the House were opened with prayer from the first, and the Chaplain was an officer of the House before the adoption of the rule (I, 273-282).

RULE VIII.

OF THE MEMBERS.

1. Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

§ 648. Members required to be present and vote.

§ 649. Personal interest.

This rule was adopted in 1789, with amendment in 1890 (V, 5941).

Leaves of absence are presented pending the motion to adjourn (IV, 3151), and are usually granted by general consent, but sometimes are opposed or even refused (II, 1142-1145). Whether or not they are privileged is a matter of doubt (II, 1146, 1147). Excuses for absence, as distinguished from leaves of absence, may be granted by less than a quorum (IV, 3000-3002). The statutes provide that deductions may be made from the salaries of Members who are absent without sufficient excuse (II, 1149, 1150); and this law has actually been enforced (IV, 3011, footnote).

It has been found impracticable to enforce the provision requiring every Member to vote (V, 5942-5948); and the weight of authority also favors the idea that there is no authority in the House to deprive a Member of the right to vote (V, 5937, 5952, 5959, 5966, 5967). In one or two instances the Speaker has decided that, because of personal interest, a Member should not vote (V, 5955, 5958); but usually the Speaker has held that the Member himself should determine this question (V, 5950, 5951), and one Speaker denied his own power to deprive a Member of the constitutional right to vote (V, 5956). (See also ruling by Speaker Clark, Dec. 22, 1914. Record, 3d sess., 63d Cong., p. 615.)

§ 650. Member's control of his own vote.

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§§ 651, 652.

Rule VIII.

The House has frequently excused Members from voting in cases of personal interest (III, 2294; V, 5962).

It is a principle of "immemorial observance" that a Member should withdraw when a question concerning himself arises (V, 5949); but it has been held that the disqualifying interest must be such as affects the Member directly (V, 5954, 5955, 5963), and not as one of a class (V, 5952).

In a case where questions affected the titles of several Members to their seats, each refrained from voting in his own case, but did vote on the identical cases of his associates (V, 5957, 5958). And while a Member should not vote on the direct questions affecting himself, he has sometimes voted on incidental questions (V, 5960, 5961).

2. Pairs shall be announced by the Clerk, after the completion of the second roll call, from a written list furnished him, and signed by the Member making the statement to the Clerk, which list shall be published in the Record as a part of the proceedings, immediately following the names of those not voting: *Provided*, pairs shall be announced but once during the same legislative day.

This rule was adopted in 1880, although the practice of pairing had then existed in the House for many years (V, 5981).

Pairs may not be announced at a time other than that prescribed by the rule (V, 6046) or in Committee of the Whole (V, 5984). The House does not consider questions arising out of the breaking of a pair (V, 5982, 5983, 6095) or permit a Member to vote after the call on the plea that he had refrained because of misunderstanding as to a pair (V, 6080, 6081). (See Congressional Record, Aug. 27, 1918, p. 9583, for Speaker Clark's interpretation of the rule and practice of the House of Representatives as to pairs.)

RULE IX.

QUESTIONS OF PRIVILEGE.

Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; second, the rights, reputation, and conduct of Members, individually, in their representative capacity only; and shall have precedence of all other questions, except motions to adjourn.

§ 653. Definition and precedence of questions of privilege.

This rule was adopted in 1880 (III, 2521). It merely put in form of definition what had been long established in the practice of the House, but what the House had hitherto been unwilling to define (II, 1603).

The privilege of the House, as distinguished from that of the individual Member, includes questions relating to its constitutional prerogatives, in respect to revenue legislation and appropriations (II, 1480-1501); including revenue, and other treaties (II, 1502-1537); its power to punish for contempt, whether of its own Members (II, 1641-1665), of witnesses who are summoned to give information (II, 1608, 1612; III, 1666-1724), or of other persons (II, 1597-1640); questions relating to its organization (I, 22-24, 189, 212, 290), and the title of its Members to their seats (III, 2579-2587), including various questions incidental thereto (I, 322, 328, 673, 742; II, 1207; III, 2588); the conduct of officers and employees (I, 284, 285; III, 2628, 2645-2647); comfort and convenience of Members and employees (III, 2629-2636); admission to the floor of the House (III, 2624-2626); the accuracy and propriety of reports in the Congressional Record (V, 7005-7023); the conduct of representatives of the press (II, 1630, 1631; III, 2627); the protection of papers in its files, especially when demanded by the courts (III, 2604, 2660-2664); the integrity of its Journal (II, 1353; III, 2620); the protection of its records (III, 2659); the accuracy of its documents (V, 7329) and messages (III, 2613); and the integrity of the processes by which bills are considered (III, 2597-2601, 2614; IV, 3383, 3388, 3478).

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§§ 655, 656.

Rule IX.

The privilege of the Member rests primarily on the Constitution, which gives to him a conditional immunity from arrest; and § 655. Privilege of the Member. an unconditional freedom of debate in the House (III, 2670). A menace to the personal safety of Members from an insecure ceiling in the Hall was held to involve a question of the highest privilege (III, 2685); and an assault on a Member within the Capitol when the House was not in session, from a cause not connected with the Member's representative capacity, was also held to involve a question of privilege (II, 1624). But there has been doubt as to the right of the House to interfere for the protection of Members who, outside the Hall, get into difficulties not connected with their official duties (II, 1277; III, 6278; footnote). Charges against the conduct of a Member are held to involve privilege when they relate to his representative capacity (III, 1828-1830, 2716); but when they relate to conduct at a time before he became a Member they have not been entertained as of privilege (II, 1287; III, 2691, 2723, 2725). A distinction has been drawn between charges made by one Member against another in a newspaper and the same when made on the floor (III, 1827, 2691, 2717). Charges made in newspapers against Members in their representative capacities involve privilege (III, 1832, 2694, 2696-2699, 2703, 2704), even though the names of individual Members be not given (III, 1831, 2705, 2709). But vague charges in newspaper articles (III, 2711), criticisms (III, 2712-2714), or even misrepresentations of the Members' speeches or acts (III, 2707, 2708) have not been entertained.

The clause of the rule giving questions of privilege precedence of all other questions except a motion to adjourn is a recognition of a principle always well understood in the House, for it is an axiom of the parliamentary law that such a question "supersedes the consideration of the original question, and must be first disposed of" (III, 2522, 2523). As the business of the House began to increase it was found necessary to give certain important matters a precedence by rule, and such matters are called "privileged questions." But as they relate merely to the order of business under the rules, they are to be distinguished from "questions of privilege" which relate to the safety or efficiency of the House itself as an organ for action (III, 2718). It is evident, therefore, that a question of privilege takes precedence over a matter merely privileged under the rules (III, 2526-2530; V, 6454). Formerly certain matters of business, arising under provisions of the Constitution mandatory in nature, were held to have a privilege which superseded the rules establishing the order of business, as bills providing for census or apportionment (I, 305-308), bills returned with the objections of the President (IV, 3530-3536), propositions of impeachment (III, 2045-2048, 2051, 2398), and questions incidental thereto (III, 2401, 2418; V, 7261), matters relating to the count of the electoral vote (III, 2573-2578), and resolutions relating to adjournment and recess

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Rule IX.

§§ 657-659.

of Congress (V, 6698, 6701-6706), and a resolution declaring the office of Speaker vacant (Speaker Cannon, 61st Cong., 2d sess., p. 3437); but under later decisions bills relating to census and apportionment have been held not to present questions of privilege, and the effect of such decisions is to require all questions of privilege to come within the specific provisions of this rule (Mar. 16, 1910, p. 3251; Speaker Gillett, May 6, 1921, p. 1129; Apr. 8, 1926, p. 7147). The ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules without precedence as matters of privilege (III, 2567). A motion to amend the Rules of the House does not present a question of privilege (Speaker Cannon sustained by the House by a vote of 235 to 53, thereby overruling the decision of March 19, 1910, which held such motion privileged; 61st Cong., 3d sess., p. 686). A legislative proposition presented as a question of constitutional privilege under the provisions of the Fourteenth Amendment was held not to involve a question of privilege (Speaker Gillett, May 6, 1921, p. 1129).

A question of privilege may interrupt the reading of the Journal (II, 1630), or the consideration of a bill under a special order (III, 2524, 2525), or a rule providing for a vote "without intervening motion" (Speaker Gillett, Aug. 20, 1921, p. 5357), or a proposition to suspend the rules (III, 2553), or the consideration of a matter on which the previous question has been ordered (III, 2532). While a question of privilege is pending a message of the President is received (V, 6640-6642), but is read only by unanimous consent (V, 6639). A motion to reconsider may also be entered but may not be considered (V, 5673-5676). Only one question of privilege may be pending at a time (III, 2533). In general one question of privilege may not take precedence over another (III, 2534, 2552, 2581).

When a Member proposes merely to address the House on a question of personal privilege, and does not bring up a matter affecting the efficiency or integrity of the House as an organ for action, the practice as to precedence is somewhat different. Thus, a Member rising to a question of personal privilege may not interrupt a call of the yeas and nays (V, 6051, 6052, 6058, 6059) or take from the floor another Member who has been recognized for debate (V, 5002), but he may interrupt the ordinary legislative business (III, 2531). A Member may address the House on a question of personal privilege even after the previous question has been ordered on a pending bill. (Speaker Clark, Dec. 12, 1912, 62d Cong., 3d sess.)

During a call of the House in the absence of a quorum only such questions of privilege may be presented as relate to the immediate proceedings (III, 2545). A question of privilege may be raised in Committee of the Whole as to a matter occurring in that committee (III, 2540-2544), yet a breach of privilege occurring in Committee of the Whole relates to the dignity of the

§ 657. Precedence of questions of privilege as related to pending business.

§ 658. Precedence of questions of personal privilege.

§ 659. Questions of privilege in the absence of a quorum.

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§§ 660-662.

Rule X.

House and is so treated (II, 1657). A proposition of privilege may lose its precedence by association with a matter not of privilege (III, 2551; V, 5890).

Whenever it is asserted on the floor that the privileges of the House are invaded, the Speaker entertains the question (II, 1501), and common fame has been held sufficient basis for raising a question (III, 2538, 2701); a telegraphic dispatch may also furnish a basis (III, 2539). But a Member may not, as a matter of right, require the reading of a book or paper on suggesting that it contains matter infringing on the privileges of the House (V, 5258). In presenting a question of personal privilege the Member is not required in the first instance to offer a motion, but he must take this preliminary step in raising a question of general privileges (III, 2546, 2547).

RULE X.

OF COMMITTEES.

§ 661. Election of standing committees.

There shall be elected by the House, at the commencement of each Congress, the following standing committees, viz:

The present form of this rule was adopted April 5, 1911, Sixty-second Congress, first session. The old rule intrusting the appointment of committees to the Speaker was adopted in 1789 and amended in 1790 and in 1860 (IV, 4448-4476). Committees are now elected on motion or resolution from the floor, and it is in order to move the previous question on such motion or resolution. (Speaker Clark, June 6, 1913, p. 1914.) The motion is not divisible (sec. 744).

§ 662. Names and numbers of the standing committees.

1. * * * On Elections, three committees, to consist of 9 members each, to be called No. 1, No. 2, and No. 3, respectively.

2. On Ways and Means, to consist of 25 members.

3. On Appropriations, to consist of 35 members.

4. On the Judiciary, to consist of 23 members.

5. On Banking and Currency, to consist of 21 members.

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6. On Coinage, Weights, and Measures, to consist of 18 members.

7. On Interstate and Foreign Commerce, to consist of 21 members.

8. On Rivers and Harbors, to consist of 21 members.

9. On the Merchant Marine and Fisheries, to consist of 21 members.

✓ 10. On Agriculture, to consist of 21 members.

11. On Foreign Affairs, to consist of 21 members.

12. On Military Affairs, to consist of 21 members.

13. On Naval Affairs, to consist of 21 members.

✓ 14. On the Post Office and Post Roads, to consist of 21 members.

15. On the Public Lands, to consist of 21 members.

16. On Indian Affairs, to consist of 21 members.

17. On the Territories, to consist of 21 members.

18. On Insular Affairs, to consist of 21 members.

19. On Mines and Mining, to consist of 16 members.

20. On Public Buildings and Grounds, to consist of 21 members.

21. On Education, to consist of 21 members.

22. On Labor, to consist of 21 members.

23. On Patents, to consist of 21 members.
24. On Invalid Pensions, to consist of 21 members.
25. On Pensions, to consist of 21 members.
26. On Claims, to consist of 21 members.
27. On War Claims, to consist of 21 members.
28. On the District of Columbia, to consist of 21 members.
29. On Revision of the Laws, to consist of 13 members.
30. On the Civil Service, to consist of 21 members.
31. On Election of President, Vice President, and Representatives in Congress, to consist of 13 members.
32. On Irrigation and Reclamation, to consist of 17 members.
33. On Immigration and Naturalization, to consist of 21 members.
34. On Expenditures in the Executive Departments, to consist of 21 members.
35. On Rules, to consist of 12 members, of which the Speaker shall not be a member.
36. On Accounts, to consist of 11 members.
37. On the Census, to consist of 21 members.
38. On Roads, to consist of 21 members.
39. On Flood Control, to consist of 21 members.
40. On World War Veterans' Legislation, to consist of 21 members.

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Also the following joint standing committees, viz:

41. On the Library, to consist of 5 members.
42. On Printing, to consist of 3 members.
43. On Enrolled Bills, to consist of 7 members.
44. On the Disposition of Useless Executive Papers,
to consist of 2 members.

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§§ 663-666.

Rule X.

§ 663. Speaker appoints select and conference committees.

2. The Speaker shall appoint all select and conference committees which shall be ordered by the House from time to time.

This portion of the rule relating to select committees was adopted in 1880, and the provision relating to conference committees in 1890, although the practice of leaving the appointment of conference committees to the Speaker had existed from the earliest years of the House's history (IV, 4470).

Prior to 1880 the House might take from the Speaker the appointment of a select committee (IV, 4448, 4470), and on several occasions did so in fact (IV, 4471-4476).

In the earlier usage of the House the Member moving a select committee was appointed its chairman (II, 1275; III, 2342; IV, 4514-4516); but except for matters of ceremony, the inconvenience and even impropriety of the usage has caused it often to be disregarded in modern practice (IV, 4517-4523, 4671).

A motion to instruct the Speaker as to the number and composition of a conference committee on the part of the House was ruled not in order. (Speaker Clark, 2d sess. 63d Cong., p. 1316, Dec. 20, 1913.)

3. At the commencement of each Congress the House shall elect as chairman of each standing committee one of the members thereof; in the temporary absence of the chairman the member next in rank in the order named in the election of the committee, and so on, as often as the case shall happen, shall act as chairman; and in case of a permanent vacancy in the chairmanship of any such committee the House shall elect another chairman.

§ 664. Selection of chairman of committee.

(Adopted 62d Cong., Apr. 5, 1911, p. 80.)

4. All vacancies in standing committees of the House shall be filled by election by the House.

§ 665. Committee vacancies.

(Adopted 62d Cong., Apr. 5, 1911, p. 80.)

5. The chairman shall appoint the clerk or clerks or other employees of his committee, subject to its approval, who shall be paid

§ 666. Clerk of committee.

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Rule XI.

§ 667

at the public expense, the House having first provided therefor.

This rule was adopted in 1838 and amended in 1880 (IV, 4533). Amended 1st sess. 61st Cong.

Annual clerks of committees are authorized by a resolution reported by the Committee on Accounts and agreed to by the House (IV, 4534), and session clerks are assigned to committees by similar action (IV, 4535).

There is no legal power to fill a vacancy in the clerkship of a committee after one Congress has expired and before the next House has been organized (IV, 4539), but the law provides that during this period the clerks shall perform their duties under the Clerk of the House.

An assault upon the clerk of a committee within the walls of the Capitol was held to be a breach of privilege (II, 1629).

The pay of clerks has been the subject of several decisions (IV, 4536-4538).

RULE XI.

POWERS AND DUTIES OF COMMITTEES.

All proposed legislation shall be referred to the committees named in the preceding rule, as follows, viz, subjects relating—

§ 667. Jurisdiction of committees.

This rule is mandatory on the Speaker in referring public bills and on Members in referring private bills and petitions under Rule XXII, but when the House itself refers a bill it may send it to any committee without regard to the rules of jurisdiction (IV, 4375; V, 5527) and jurisdiction is thereby conferred (IV, 4362-4364). A bill may not be divided among two or more committees, although it may contain matters properly within the jurisdiction of several committees (IV, 4372). A bill may be originated by a committee having jurisdiction of a subject by means of a petition (IV, 3365) properly referred (IV, 4361). It has generally been held that a committee may not report a bill whereof the subject matter has not been referred to it by the House (IV, 4355-4360, 4372). (Chairman Saunders, Sept. 19, 1918, p. 10524; Chairman Tilson, Jan. 21, 1920, p. 1851.) Where a House bill is returned from the Senate with a substitute amendment relating to a new and different subject, the reference should nevertheless be to the committee having jurisdiction of the original bill (IV, 4373, 4374). The erroneous reference of a public bill under this rule, if it remain uncorrected, gives jurisdiction (IV, 4365-4371), but such is not the case with a private bill or petition (IV, 3364, 4382-4389) unless the reference be made by action of the House itself (IV, 4390, 4391). A point of order as to the reference of a private bill is good when the bill comes up for consideration, either in the House or in Committee of the Whole (IV, 4382-4389). The reference of a bill to a committee involving the same subject matter as a bill previously reported confers jurisdiction anew upon the committee to consider and report the bill subsequently introduced. (Speaker Longworth, Mar. 12, 1926, 1st sess., 69th Cong., p. 5477.)

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§§ 668-671.

Rule XI.

1. To the election of Members—to the respective § 668. Elections. Committees on Elections.

The Committee on Elections was established as a standing committee in 1794, but there had been a select committee from the first organization of the House. In 1895 it was divided into three committees (IV, 4019).

The Committee on Elections has considered questions relating to credentials (I, 764, footnote) and qualifications (I, 426; § 669. II, 946), and legislation concerning the institution of contests (66th Cong.).

2. To the revenue and such measures as purport § 670. Ways and Means. to raise revenue and the bonded debt of the United States—to the Committee on Ways and Means.

As a select committee Ways and Means dates from 1789. It was made a standing committee in 1802. Originally it considered both revenue and appropriations; but in 1865 the appropriation bills were given to the Committee on Appropriations and certain other bills to the Committee on Banking and Currency (IV, 4020). The rule was also amended April 5, 1911.

The revenue jurisdiction extends to such subjects as transportation of dutiable goods, collection districts, ports of entry and delivery (IV, 4026), customs unions, reciprocity treaties (IV, 4021), seal herds and other revenue-producing animals of Alaska (IV, 4025), revenue relations of the United States with Porto Rico and the Philippines (IV, 4025), the revenue bills relating to agricultural products generally, excepting oleomargarine (IV, 4022), and tax on cotton and grain futures.

The committee has jurisdiction of subjects relating to the Treasury of the United States and the deposit of the public moneys (IV, 4028), but it failed to make good a claim to the subjects of "national finances" and "preservation of the Government credit" (IV, 4023).

The committee has jurisdiction of legislation relating to World War veterans except legislation relating to disability incurred in service (66th Cong., 2d sess., p. 3521).

The committee also reports the resolutions distributing the President's annual message (IV, 4030), and resolutions for final adjournments of Congress and recesses (IV, 4031).

3. To appropriation of the revenue for the support § 671. Appropriations. of the Government—to the Committee on Appropriations.

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Rule XI.

§ 672.

This committee was established in 1865, when all the general appropriation bills were confided to its care. In 1885 a portion of the bills were distributed to other committees. On July 1, 1920, the committee was given jurisdiction over all appropriations by an amendment to the Rules adopted June 1, 1920.

While this committee has authority to report appropriations, the power to report legislation relating thereto belongs to other committees (IV, 4033).

4. To judicial proceedings, civil and criminal law—to the Committee on the Judiciary.

§ 672. Judiciary.

This committee dates from 1813 (IV, 4054).

It considers charges against judges of the United States courts (IV, 4062), legislative propositions relating to the service of the Department of Justice (IV, 4067), bills relating to local courts in the District of Columbia, Alaska, and the Territories (IV, 4068), the establishment of a court of patent appeals (IV, 4075), relations of the courts to labor and corporations (IV, 4072), crimes, penalties, extradition (IV, 4069), construction and management of national penitentiaries (IV, 4070), matters relating to trusts and corporations (IV, 4057, 4059, 4060), claims of States against the United States (IV, 4080), general legislation relating to international and other claims (IV, 4078, 4079, 4081), bills relating to the office of President (IV, 4077), to the flag (IV, 4055), holidays and celebrations (IV, 4073), bankruptcy (IV, 4065), removal of political disabilities (IV, 4058), prohibition of traffic in intoxicating liquors (IV, 4061), mutiny and willful destruction of vessels (IV, 4145), counterfeiting (IV, 4071), settlement of State and Territorial boundary lines (IV, 4060), meeting of Congress and attendance of Members and their acceptance of incompatible offices (IV, 4077). This committee also has a general but not exclusive jurisdiction over joint resolutions proposing amendments to the Constitution (IV, 4056). It also reports on important questions of law relating to subjects naturally within the jurisdiction of other committees (IV, 4063).

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§§ 673-675.

Rule XI.

§ 673. Banking
and currency.

5. To banking and currency—to the Committee on Banking and Currency.

This committee was established in 1865 (IV, 4082).

It has reported on subjects relating to the strengthening of public credit, issues of notes and taxation and redemption thereof (IV, 4084), propositions to maintain the parity of the money of the United States (IV, 4089), the issue of silver certificates as currency (IV, 4087, 4088), national banks and current deposits of public money (IV, 4083), the incorporation of an international bank (IV, 4086), subjects relating to the Freedman's Bank (IV, 4085), and Federal Reserve system, farm loan act, home loan bills, stabilization of the dollar, War Finance Corporation, Federal Reserve Bank buildings (63d to 67th Congresses).

§ 674. Coinage,
weights, and
measures.

6. To coinage, weights, and meas- ures—to the Committee on Coinage, Weights, and Measures.

This committee was established in 1864 (IV, 4090).

It has reported on bills defining and fixing the standard of value, regulating coinage and exchanges of coin (IV, 4095), coinage of silver and purchase of bullion (IV, 4093), Hawaiian coinage (IV, 4092), mints and assay offices (IV, 4094), the standardizing bureau and metric system (IV, 4091).

7. To commerce, life-saving service, and light- houses, other than appropriations for life-saving service and lighthouses— to the Committee on Interstate and Foreign Commerce.

§ 675. Interstate
and foreign
commerce.

This committee dates from 1795 (IV, 4096).

It formerly reported the river and harbor appropriation bill, but in 1883 the Committee on Rivers and Harbors was created to care for this bill (IV, 4096). This committee has no jurisdiction over appropriations, although the words of the rule imply that it may appropriate for commerce.

Bills relating to the Department of Commerce and the Interstate Commerce Commission (IV, 4098) are reported by this committee.

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Rule XI.

§§ 676, 677.

The Committee on Interstate and Foreign Commerce has general jurisdiction of bills affecting domestic and foreign commerce, except such as may affect the revenue (IV, 4097), of bills relating to bills of lading, entering and clearing of vessels, liability of shipowners (IV, 4137), regulation of harbors, and the placing of works such as pipes and tunnels likely to obstruct navigation (IV, 4102), privilege of foreign vessels in American ports, contracts in export trade, wrecks in international waters (IV, 4144), authorization of light ships, fog signals (V, 4104), revenue cutters, and auxiliary craft of the customs service (IV, 4108), ocean derelicts, lumber rafts, hydrographic office charts (IV, 4105), life-saving service and refuge stations in the Arctic regions (IV, 4107).

Bills relating to ocean cables (IV, 4106), to the government of the Panama Canal Zone and the operation of the canal, and to a limited extent the general subjects of canals in the United States (IV, 4103) and improvement of navigation from Great Lakes via St. Lawrence River to the sea (Jan. 24, 1922, 67th Cong., 2d sess.), are also within its jurisdiction.

It also has jurisdiction of bills authorizing the construction of marine hospitals and the acquisition of sites therefor (IV, 4110), the general subjects of quarantine and the establishment of quarantine stations (IV, 4109), health, spread of leprosy and other contagious diseases, international congress of hygiene, etc. (IV, 4111).

Bills declaring as to whether or not streams are navigable and for preventing or regulating hindrances to navigation (IV, 4101), such as bridges (IV, 4099) and dams, except such dams as are a part of river improvements (IV, 4100), and water-power legislation (65th Cong.) belong to the jurisdiction of this committee.

The Committee on Interstate and Foreign Commerce considers bills regulating railroads in their interstate commerce relations (IV, 4114), bills relating to commercial travelers as agents of interstate commerce and the branding of articles going into such commerce (IV, 4115), the prevention of the carriage of indecent and harmful pictures or literature (IV, 4116), the adulteration, misbranding, etc., of foods and drugs (IV, 4112), and protection of game through prohibition of interstate transportation (IV, 4117). The regulation of exportation of live stock, meat, and other agricultural products have also been to a certain extent within the jurisdiction of this committee (IV, 4113), as well as the regulation and investigation of the coal industry (67th Cong.).

The committee exercises jurisdiction over the subject of commercial aviation.

§§ 678, 679.

Rule XI.

§§ 678. Rivers and
harbors.

8. To the improvements of rivers and harbors—to the Committee on Rivers and Harbors.

This committee was established in 1883 (IV, 4118).

Formerly this committee reported the river and harbor appropriation bill (IV, 4621), and the bill was not one of the general appropriation bills subject to the restriction of clause 2 of Rule XXI (IV, 3897-3903, 4219), but in the Sixty-sixth Congress the river and harbor appropriation bill was reported as privileged from the Committee on Appropriations and held subject to the provisions of clause 2 of Rule XXI (Jan. 28-31, 1921). The committee has reported on public works for the benefit of navigation, on the use of water power on improved streams (IV, 4125), oil pollution (67th Cong.), and on an international arrangement as to the use of water at the outlet of the Great Lakes (IV, 4126). But a provision relating to a commission to investigate the conditions and uses of waters adjacent to an international boundary line (IV, 4165), as well as propositions for the construction of canals (IV, 4219, 4220), except the Cape Cod Canal (Jan. 28, 1926, 69th Cong., 1st sess.), and for irrigation (IV, 4128), have been held not to be within the jurisdiction of the committee.

§ 679. Merchant
marine and
fisheries.

9. To the merchant marine and fish- eries—to the Committee on the Mer- chant Marine and Fisheries.

This committee was established in 1887 (IV, 4129).

The jurisdiction of this committee includes the general subjects of ship-building, admission of foreign-built ships, registering and licensing of vessels (IV, 4134), including pleasure yachts (IV, 4143), tonnage taxes and fines and penalties on vessels (IV, 4131), the extension and increase of the merchant marine (IV, 4138), navigation and the laws relating thereto (IV, 4130), pilotage (IV, 4136), the naming and measuring of vessels (IV, 4132), rules and international arrangements to prevent collisions at sea (IV, 4135), and the shipping, wages, treatment (IV, 4140), and health of sailors (IV, 4141). The committee has also exercised a general but less exclusive jurisdiction over subjects relating to inspection of steam vessels as to hulls and boilers (IV, 4133), lights and signals (IV, 4135), and protection from fire on vessels (IV, 4141), collisions, coasting districts, marine schools, etc. (IV, 4146), regulation of small vessels propelled by naphtha, etc., and transportation of inflammable substances on passenger vessels (IV, 4142), the titles, conduct, and licensing of officers of vessels (IV, 4139), and regulation of shipping in Hawaii and even in the Philippines (IV, 4130), radio service (66th Cong.).

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XI.

§§ 680, 681.

10. To agriculture and forestry—to the Committee on Agriculture.

This committee was established in 1820. In 1880 the subject of forestry was added to its jurisdiction, and at the same time the authority to receive the estimates and report appropriations was conferred (IV, 4149), but on July 1, 1920, authority to report appropriations for the Department of Agriculture was transferred to the Committee on Appropriations.

It has had jurisdiction of bills for establishing and regulating the Department of Agriculture (IV, 4150), for inspection of live stock and meat products, regulation of animal industry, diseases of animals (IV, 4154), adulteration of seeds, insect pests, protection of birds and animals in forest reserves (IV, 4157), the improvement of the breed of horses, even with the cavalry service in view (IV, 4158).

The committee, having in charge the general subject of forestry, has reported bills relating to timber, and forest reserves other than those created from the public domain (IV, 4160).

It has also exercised jurisdiction of bills relating to agricultural colleges and experiment stations (IV, 4152), the Weather Bureau (IV, 4151), incorporation of agricultural societies (IV, 4159), establishment of a highway commission (IV, 4153), and to discourage fictitious and gambling transactions in farm products (IV, 4161).

The committee has, by direct action of the House, secured jurisdiction of bills imposing an internal-revenue tax on oleomargarine (IV, 4156), and has also had a general but not exclusive jurisdiction of bills relating to imitation dairy products, manufacture of lard, etc. (IV, 4156), and tax on cotton and grain futures (65th Cong.). But this jurisdiction of revenue matters is exceptional (IV, 4155).

11. To the relations of the United States with foreign nations—to the Committee on Foreign Affairs.

§ 681. Foreign affairs.

This committee was established in 1822, and had authority to report appropriations from 1885 to 1920 (IV, 4162).

It has a broad jurisdiction over foreign relations, including bills to establish boundary lines between the United States and foreign nations, to determine naval strength, and regulate bridges and dams on international waters (IV, 4166), for the protection of American citizens abroad and expatriation (IV, 4169), to maintain the treaty rights of American fishermen (IV, 4171), for extradition with foreign nations, international arbitration, relating to violation of neutrality (IV, 4178a), international

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§§ 682, 683.

Rule XL

conferences and congresses (IV, 4177), the incorporation of the American National Red Cross and protection of its insignia (IV, 4173), immigration of Chinese and Japanese (IV, 4172), intervention abroad and declarations of war (IV, 4164), affairs of the consular service, including acquisition of land and buildings for legations in foreign capitals (IV, 4163), creation of courts of the United States in foreign countries (IV, 4167), treaty regulations as to protection of fur seals (IV, 4170).

The committee has also considered measures for fostering commercial intercourse with foreign nations and for safeguarding American business interests abroad (IV, 4175), and even the subjects of commercial treaties and reciprocal arrangements (IV, 4174), although in later practice the Committee on Ways and Means has considered such matters (IV, 4621). Foreign Affairs has exercised a general but not exclusive jurisdiction over legislation relating to claims having international relations (IV, 4168). The committee also exercised a preliminary jurisdiction as to the canal between the Atlantic and Pacific oceans (IV, 4177).

12. To the Military Establishment, including the
§ 682. Military increase or reduction of commissioned
affairs. officers and enlisted men and their pay
and allowances, the militia, and the public defense—
to the Committee on Military Affairs.

This committee was created in 1822, and in 1885 the authority to report appropriations was conferred (IV, 4179), but on July 1, 1920, authority to report all appropriations was transferred to the Committee on Appropriations.

To this committee belongs the jurisdiction of legislative propositions relating to the War Department (IV, 4181). It also reports legislation for national soldiers' homes (IV, 4184), military parks and battlefields (IV, 4187), and national cemeteries (IV, 4186, 4033, 4051). In a few instances this committee has reported general bills providing for the adjustment of claims arising out of war (IV, 4188).

13. To the Naval Establishment, including the
§ 683. Naval affairs. increase or reduction of commissioned
officers and enlisted men and their pay
and allowances and the increase of ships or vessels of
all classes of the Navy—to the Committee on Naval
Affairs.

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§§ 684-686.

This committee was created in 1822, and had jurisdiction of appropriations from 1885 to 1920 (IV, 4189). It has jurisdiction of all legislation relating to the Naval Establishment, including naval disarmament (67th Cong.).

14. To the post-office and post-roads—to the Committee on the Post-Office and Post-Roads.

§ 684. Post-office
and post-roads.

This committee was created in 1808, and had jurisdiction of appropriations from 1885 to 1920 (IV, 4190).

It reports legislation relating to the postal service, including the Railway Mail Service (IV, 4191), and has general jurisdiction of subjects relating to railway, ocean, and pneumatic-tube service (IV, 4192), postal savings banks and postal telegraphy (IV, 4193), Government control of telephones in the District of Columbia (Feb. 28, 1918, p. 2807).

15. To the lands of the United States and private claims to land—to the Committee on the Public Lands.

§ 685. Public lands.

This committee was created in 1805 (IV, 4194).

It reports on subjects relating to the mineral resources of the public lands (IV, 4202), forfeiture of land grants and alien ownership (IV, 4201), public lands of Alaska (IV, 4196), forest reserves (IV, 4197), and national parks created out of the public domain (IV, 4199), preservation of prehistoric ruins and objects of interest on the public domain (IV, 4199), the reservation at Arkansas Hot Springs (IV, 4200), and sometimes to projects of general legislation relating to various classes of land claims (IV, 4203).

16. To the relations of the United States with the Indians and the Indian tribes—to the Committee on Indian Affairs.

§ 686. Indian
affairs.

This committee was created in 1821, and had jurisdiction of appropriations from 1885 to 1920 (IV, 4204).

It has a broad jurisdiction of subjects relating to the care, education, and management of the Indians, including the care and allotment of their lands (IV, 4205). It also reports both general and special bills as to claims which are paid out of Indian funds (IV, 4206).

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§§ 687-691.

Rule XI.

17. To territorial legislation, the revision thereof, and affecting Territories or the admission of States—to the Committee on the Territories.

This committee was established in 1825 (IV, 4208).

It has general jurisdiction of subjects relating to Hawaii and Alaska (IV, 4211).

18. To all matters (excepting those affecting the revenue and the appropriations) pertaining to the islands which came to the United States through the treaty of 1899 with Spain, and to Cuba—to the Committee on Insular Affairs.

§ 688. Insular
affairs.

This committee was created in 1899 (IV, 4213).

Although the rule includes subjects relating to Cuba within the jurisdiction of this committee, the House has by formal action sent them to the Committee on Foreign Affairs (IV, 4215). The Committee on Insular Affairs has reported on a general provision for dealing with a certain class of claims in the Philippine Islands (IV, 4216). It has jurisdiction of matters relating to Porto Rico, the Philippine Islands, and the Virgin Islands.

§ 690. Mines and
mining.

19. To the mining interests—to the Committee on Mines and Mining.

This committee was established in 1865 (IV, 4223).

It has reported bills relating to mineral-land laws and claims and entries thereunder (IV, 4228), to the Geological Survey (IV, 4224), to establish departments or bureaus of mines and geology (IV, 4225), to alien ownership of mineral lands (IV, 4227), to establishment of schools of mines and mining experiment stations (IV, 4226), to the welfare of men working in mines (IV, 4229), to mining debris in California (IV, 4230), to conservation of the radium supply of the United States (63d Cong., 2d sess., p. 1630), and to investigate silver industry (67th Cong.).

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Rule XI.

§§ 692-696.

20. To the public buildings and occupied or improved grounds of the United States, other than appropriations therefor—to the Committee on Public Buildings and Grounds.

§ 692. Public buildings and grounds.

This committee was established in 1837 (IV, 4231).

It has jurisdiction of bills authorizing the purchase of sites and construction of post-offices, custom-houses, and Federal court-houses in the various portions of the country, Government buildings within the District of Columbia (IV, 4233), including the Government Printing Office (IV, 4233). Subjects relating generally to the Capitol Building, especially the House wing (IV, 4238), including the restaurant and kitchen, have been considered by this committee (IV, 4237). It has also considered subjects relating to the public reservations and parks within the District of Columbia, including Rock Creek Park (IV, 4236), the Zoological Park (IV, 4235), and buildings and grounds of the Botanic Garden (68th Cong.). Legislation relating to the office of Supervising Architect of the Treasury (IV, 4232), authorizing housing for war needs (Feb. 13, 1918), and hospitals for World War veterans (66th Cong.) has been reported by this committee.

§ 693. Decisions on jurisdiction.

21. To education—to the Committee on Education.

§ 694. Education.

This committee was established in 1867 (IV, 4242).

22. To and affecting labor—to the Committee on Labor.

§ 695. Labor.

This committee was established in 1883 (IV, 4244).

It has reported on bills relating to arbitration as a means of settling labor troubles (IV, 4246), to wages and hours of labor (IV, 4247), to convict labor and the entry of goods made by convicts into interstate commerce (IV, 4248), to the regulation or prevention of importation of foreign laborers under contract (IV, 4249), to labor employed in various branches of the Government service (IV, 4250), and rarely to classes of claims under the eight-hour law (IV, 4251).

§ 696. Decisions on jurisdiction.

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§§ 697-700.

Rule XI.

§ 697. Patents.

23. To patents, copyrights, and trade-marks—to the Committee on Patents.

This committee was created in 1837 (IV, 4254).

It has jurisdiction of general and special legislation relating to copyrights, although its title to the subject of international copyright has been contested by Judiciary (IV, 4257). It also reports bills relating to the general subject of trade-marks, including punishment for the counterfeiting thereof (IV, 4256), patent law, jurisdiction of courts in patent cases, the Patent Office, including a building therefor (IV, 4255), and the holding of an international patent conference (IV, 4255).

§ 698. Invalid pensions.

24. To the pensions of the civil war—to the Committee on Invalid Pensions.

This committee was first established in 1813 as a Committee on Pensions and Revolutionary Claims. Its name and jurisdiction have been changed to suit varying conditions (IV, 4258). It reports general and special bills authorizing pensions, but the actual appropriations therefor are reported by the Committee on Appropriations (IV, 4259).

§ 699. Pensions.

25. To the pensions of all the wars of the United States, other than the civil war—to the Committee on Pensions.

This committee is an offshoot from the old Committee on Pensions and Revolutionary Claims, which was established in 1813 (IV, 4258, 4260). It reports general and special bills authorizing pensions, but does not report appropriations (IV, 4261).

§ 700. Claims.

26. To private and domestic claims and demands, other than war claims, against the United States—to the Committee on Claims.

This committee was established in 1794 (IV, 4262).

It reports special bills making appropriations (Chairman Campbell, June 24, 1921, p. 3050). Within its jurisdiction are subjects relating to the redemption of lost bonds, checks, and coupons (IV, 4266), and French spoliation claims (IV, 4264, 4265). While ordinarily reporting only special bills for the relief of individuals and corporations, it has reported at times general bills relating to disposition of classes of claims (IV, 4263), and public bills for adjusting accounts between the United States and the several States and Territories (IV, 4267).

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§§ 701-704.

27. To claims arising from any war in which the United States has been engaged—to the Committee on War Claims.

§ 701. War claims.

This committee is an offshoot of the old Committee on Pensions and Revolutionary Claims, established in 1813. Its present name was adopted in 1873 (IV, 4269).

§ 702. History of committee.

Within the limits of its jurisdiction it may report bills making appropriations (IV, 4269; Chairman Campbell, June 24, 1921, p. 3050). While reporting generally on special bills for settlement of claims of individuals and corporations, it has reported also on the war claims of States and Territories against the United States (IV, 4271), and on general bills providing for the adjudication of classes of war claims (IV, 4270).

28. To the District of Columbia, other than appropriations therefor—to the Committee on the District of Columbia.

§ 703. District of Columbia.

This committee was established in 1808 (IV, 4276).

It reports bills proposing legislation as to the general municipal affairs of the District (IV, 4277), relating to health, sanitary and quarantine regulations (IV, 4284), holidays (IV, 4283), protection of fish and game (IV, 4282), regulation of sale of intoxicating liquors (IV, 4280), adulteration of food, drugs, etc. (IV, 4280), taxes and tax sales (IV, 4279), insurance (IV, 4278), bills for preserving public order at times of inaugurations (IV, 4292), the Government Hospital for the Insane (IV, 4285), harbor regulations and the bridge over the Eastern Branch (IV, 4286), executors, administrators, wills, and divorce (IV, 4289), police and juvenile courts and justices of the peace (IV, 4290), incorporation and organization of societies (IV, 4288), municipal code and amendments to the criminal and corporation laws (IV, 4287). The jurisdiction of this committee as to matters affecting the higher courts of the District has been exceptional rather than general (IV, 4291).

§ 704. Revision of the laws.

29. To the revision and codification of the Statutes of the United States—to the Committee on the Revision of the Laws.

This committee was established in 1868 (IV, 4293).

It has reported codifications of laws (IV, 4294), but not usually as to mere changes of laws (IV, 4295).

§ 705. Civil service.

30. To the civil service—to the Committee on the Civil Service.

This committee was created in 1893 (IV, 4296).

It has reported matters relating to the Civil Service Commission and alleged violations of the law (IV, 4298), and the status of officers, clerks, and employees of the civil branches of the Government (IV, 4297), including reclassification and retirement (66th Cong.).

§ 706. Election of President, Vice-President, and Representatives in Congress.

31. To the election of the President, Vice-President, or Representatives in Congress—to the Committee on Election of President, Vice-President, and Representatives in Congress.

This committee was established in 1893 (IV, 4299).

It has reported on national election laws and the enforcement thereof (IV, 4301), changes in the law regulating the electoral count and resolutions regulating the actual count (IV, 4303), the succession to the office of President in case of his death, disability, etc. (IV, 4304), proposed constitutional amendments providing for election of Senators by the people, disqualification of polygamists as Representatives (IV, 4300), changes of the terms of Congress and the President, and the time of annual meeting of Congress (IV, 4302).

§ 707. Irrigation and reclamation of arid lands.

32. To irrigation and reclamation—to the Committee on Irrigation and Reclamation.

This committee was established in 1893 (IV, 4307).

It has reported legislation relating to reclamation of arid lands, water supply for reclamation projects, easements over public lands for irrigation projects, Imperial Valley and other irrigation projects, and Rio Grande waste and drainage water.

§ 708. Immigration and naturalization.

33. To immigration or naturalization—to the Committee on Immigration and Naturalization.

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§§ 709, 710.

This committee was established in 1893 (IV, 4309).

§ 709. History of committee.

In addition to its general jurisdiction (IV, 4310, 4311) it has reported authorizations for sites and buildings for immigrant stations (IV, 4312).

§ 710. Expenditures in the several departments.

34. The examination of the accounts and expenditures of the several departments of the Government and the manner of keeping the same; the economy, justness, and correctness of such expenditures; their conformity with appropriation laws; the proper application of public moneys; the security of the Government against unjust and extravagant demands; retrenchment; the enforcement of the payment of moneys due to the United States; the economy and accountability of public officers; the abolishment of useless offices, shall all be subjects within the jurisdiction of the Committee on Expenditures in the Executive Departments.

This committee was established December 5, 1927 (70th Cong., 1st sess.), and took the place of eleven separate committees on expenditures in the several executive departments. The first of these committees were established in 1816, and others were added as new departments were created (IV, 4315). They reported bills relating to the efficiency and integrity of the public service (IV, 4320), leaves of absence of officers and clerks (IV, 4319), creation and abolition of offices (IV, 4318), and fees and salaries of officers and employees (IV, 4317). (Speaker Clark, Feb. 1, 1919, p. 2525.) It has been held that they might make investigations without specific direction from the House; but authority must be obtained of the House for compelling testimony (IV, 4316).

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§§ 711, 712.

Rule XI.

35. All proposed action touching the rules, joint rules, and order of business shall be referred to the Committee on Rules.

This committee, which had existed as a select committee from 1789, became a standing committee in 1880. The Speaker was first made a member of the committee in 1858 (IV, 4321), and ceased to be a member on March 19, 1910.

Primarily the jurisdiction of this committee is over propositions to make or change the rules (V, 6770, 6776), for the creation of committees (IV, 4322), and directing them to make investigations (IV, 4322-4324). It also reports resolutions relating to the hour of daily meeting and the days on which the House shall sit (IV, 4325), and orders relating to the use of the galleries during the electoral count (IV, 4327).

Since 1883 the Committee on Rules has reported special orders providing times and methods for consideration of special bills or classes of bills, thereby enabling the House by majority vote to forward particular legislation, instead of being forced to use for the purpose the motion to suspend the rules, which requires a two-thirds vote (IV, 3152; V, 6870; for forms of, IV, 3238-3263).

Special orders may still be made by suspension of the rules (IV, 3154) or by unanimous consent (IV, 3165, 3166), but it is not in order, by motion in the House, to provide that a subject be made a special order for a given date (IV, 3163), or to make a special order by a motion to postpone to a day certain (IV, 3164). But before the adoption of rules, and consequently before there is a rule as to the order of business, a Member may offer a special order for immediate consideration (V, 4971, 5450). A special order reported by the Committee on Rules must be agreed to by a majority votes of the House (IV, 3169).

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§ 713,

It is not in order to move to postpone a special order providing for the consideration of a class of bills (V, 4958), but a bill which comes before the House by the terms of a special order merely assigning the day for its consideration may be postponed by a majority vote (IV, 3177-3182). A motion to rescind a special order is not privileged under the rules regulating the order of business (IV, 3173, 3174; V, 5323).

A motion to amend the Rules of the House does not present a question of privilege. (Jan. 9, 1911, 61st Cong., 3d sess., p. 686, overruling decision of Mar. 19, 1910, 61st Cong., 2d sess., p. 342.)

For further discussion of the Committee on Rules see sections 724-726.

36. Touching the expenditure of the contingent fund of the House, the auditing and settling of all accounts which may be charged therein by order of the House, the ascertaining of the travel of Members of the House and the reporting the same to the Sergeant at Arms—to the Committee on Accounts.

§ 713. Accounts.

This committee was established in 1803. The law provides that the Speaker shall, before the termination of the last session of a Congress, appoint three Members-elect of the next House as a temporary Committee on Accounts, to exercise such functions of the committee as may need to be exercised during the recess before the organization of the next House (IV, 4328).

The Committee on Accounts reports resolutions authorizing the employment of persons by the House (IV, 4333), including clerks for Members (IV, 4334) and committees (IV, 4331), and reporters of debates (V, 6960, 6961). The assignment of committee and other rooms in the House wing, custody of documents, etc., have been considered by this committee (IV, 4330). The rules also contemplate consideration of a class of claims by the Committee on Accounts (Rule XXI, 4; IV, 4380). It also considers

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§§ 714, 715.

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subjects relating to accountability of the officers of the House (IV, 4329), and examines as to observance of the rule forbidding officers and employees of the House from being interested in claims (Rule XLIII; V, 7227). The statutes make it the duty of this committee to inquire into the enforcement of certain laws relating to employees of the House, and for this purpose it is empowered by law to send for persons and papers (V, 7233). The statutes also modify the authority of the committee over the expenditure of the contingent fund (V, 7236).

This committee reports appropriations from the contingent fund, and such appropriation is not subject to a point of order under clause 4 of Rule XXI. (Speaker Gillett, Feb. 25, 1921, p. 3892.)

37. All proposed legislation concerning the census
and the apportionment of Representatives—to the Committee on the Census.

§ 714. Census.

This committee was established as a standing committee in 1901 (IV, 4351).

It has considered the abridgment of the elective franchise with reference to apportionment, and bills relating to the collection of statistics (IV, 4352).

38. To matters relating to the construction or maintenance of roads, other than appropriations therefor—to the Committee on Roads: *Provided*, That it shall not be in order for any bill providing general legislation in relation to roads to contain any provision for any specific road, nor for any bill in relation to a specific road to embrace a provision in relation to any other specific road.

§ 715. Roads.

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§§ 716, 717.

This committee was established in 1913 (June 2, 1913, p. 1856), and has reported bills authorizing appropriations for Federal aid for the construction of roads.

39. To flood control, other than appropriations therefor—to the Committee on Flood Control.

§ 716. Flood control.

This committee was established in 1916 (Feb. 3, 1916, p. 2067), and has reported legislation authorizing surveys and construction with a view to Flood Control.

40. To war-risk insurance of soldiers, sailors, and marines, and other persons in the military and naval service of the United States during or growing out of the World War, the United States Veterans' Bureau, the compensations and allowances of such persons and their beneficiaries, and all legislation affecting them other than civil service, public lands, adjusted compensations, pensions, and private claims—to the Committee on World War Veterans' Legislation.

§ 717. World War veterans.

This committee was established January 18, 1924 (68 Cong., 1st sess.).

41. Touching the Library of Congress, statuary, and pictures—to the Joint Committee on the Library.
- § 718. Library.

This committee was established in 1802 by a law as a joint committee. In 1809 the two Houses by concurrent action supplemented the law, and in 1843 recognized it by joint rule. The joint rules having ceased to exist in 1876, the rules of the House recognized the committee in 1880. In 1902 a law increased the membership of the committee to five in each House (IV, 4337).

The statutes confer on the joint committee certain executive functions, as the acceptance or purchase of works of art for the Capitol and control of the Botanic Garden, and provide that its powers shall reside in the Senate portion in the recess after the expiration of a Congress (IV, 4337).

Aside from the executive functions of the joint committee, the House branch exercises functions as a standing committee of the House, and has a jurisdiction covering construction and care of the building of the Library of Congress, management of the Library (IV, 4339), purchase of books and manuscripts (IV, 4340), erection of monuments to the memory of individuals (IV, 4342), and in some instances on battlefields (IV, 4341), and the removal of the remains of distinguished persons (IV, 4345). The general affairs of the Smithsonian Institution and the incorporation of similar institutions are also within the jurisdiction of the House branch of this committee (IV, 4346).

42. All proposed legislation or orders touching printing shall be referred to the Joint Committee on Printing on the part of the House.
- § 719. Printing.

This committee was created by law in 1846. In 1880 it was recognized by rule. From time to time various administrative functions have been conferred by law on this joint committee, relating to the general supervision of the printing; procuring of paper and other supplies; control of arrangement, style, bulk, and indexing of the Congressional Record; supervision of the printing of the Congressional Directory; editing, indexing, and binding of documents, etc. (VI, 4347)

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§§ 720-722.

In addition to the executive duties of the joint committee, the House branch exercises legislative functions, reporting resolutions and bills relating to printing, propositions to correct the Congressional Record (IV, 4349), and in infrequent cases bills relating to the pay of employees in the Government Printing Office (IV, 4348).

§ 720. Enrolled
bills.

43. The enrollment of engrossed bills— to the Joint Committee on Enrolled Bills.

This committee was established in 1789 by a joint rule of the two Houses. This rule lapsed in 1876 with the other joint rules; but in 1880 the rules of the House were amended so as to recognize the joint committee (IV, 4350, 4416).

Each branch of the committee makes comparisons of bills of its own House for enrollment (IV, 3440) and the two cooperate in the interchange of bills for signature.

44. All proposed legislation concerning the dispo- sition of useless executive papers—to the Joint Committee on Disposition of Use- less Executive Papers.

§ 721. Useless
papers.

This committee was established in 1889 (IV, 4419).

45. The following-named committees shall have leave to report at any time on the mat- ters herein stated, namely: The Com- mittee on Rules, on rules, joint rules, and order of business; the Committee on Elections, on the right of a Member to his seat; the Committee on Ways and Means, on bills raising revenue; the Com- mittee on Appropriations, the general appropriation bills; the Committee on Rivers and Harbors, bills authorizing the improvement of rivers and harbors; the Committee on the Public Lands, bills for the for-

§ 722. Privileged
reports of
committees.

feiture of land grants to railroad and other corporations, bills preventing speculation in the public lands, and bills for the reservation of the public lands for the benefit of actual and bona fide settlers; the Committee on the Territories, bills for the admission of new States; the Committee on Enrolled Bills, enrolled bills; the Committee on Invalid Pensions, general pension bills; the Committee on Printing, on all matters referred to them of printing for the use of the House or two Houses; and the Committee on Accounts, on all matters of expenditure of the contingent fund of the House.

The beginnings of this rule appear as early as 1812, but it was in 1880 that the various provisions were consolidated in one rule. § 723. *Origin and effect of the rule giving privilege to certain reports.* At the time these privileges originated all reports were made on the floor, and often with great difficulty because of the pressure of business (IV, 4621). By giving this privilege the most important matters of business were greatly expedited. In 1890 a rule was adopted providing that reports should be made by filing with the Clerk; but privileged reports must still be made from the floor (IV, 3146). Thus the privilege of itself would now be a disadvantage were it not for the fact that the right of reporting at any time gives the right of immediate consideration by the House (IV, 3131, 3132, 3142-3147), and the matter so reported remains privileged until disposed of (IV, 3145). The House proceeds to the consideration of privileged questions only on motion directed to be made by the several committees reporting such questions. Privileged questions reported adversely have the same status so far as their privilege is concerned as those reported favorably. (Speaker Gillett, Dec. 13, 1924, 68th Cong., 2d sess., p. 605.)

The matters reported under the provisions of this rule are denominated "privileged reports" or "privileged questions," and since the privilege relates merely to the order of business under the rules, they must be distinguished from "questions of privilege" which relate to the safety or efficiency of the House itself defined in Rule IX (III, 2718). Therefore "questions of privilege" take precedence over these matters which are privileged under the rules (III, 2526-2530; V, 6454).

Privileged questions interrupt the regular order of business as established by Rule XXIV, but when they are disposed of it continues on from the point of interruption (IV, 3070, 3071). But the Speaker has declined to allow a call of committees to be interrupted by a privileged report (IV, 3132). The presence of matter not privileged with privileged matter destroys the privileged character of a bill (IV, 4622, 4624, 4633, 4640, 4643), and when the text of a bill contains nonprivileged matter, privilege may not

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be created by a committee amendment in the nature of a substitute not containing the nonprivileged matter (IV, 4623).

The House may give a committee leave to report at any time only by the process of changing the rules (III, 1770).

The privilege given by this rule to the Committee on Rules is confined to "action touching rules, joint rules, and order of business," and this committee may not report as privileged a concurrent resolution providing for a Senate investigating committee (Aug. 15, 1912, p. 11017), or provide for the appointment of a clerk (Jan. 11, 1918, 65th Cong., 2d sess., p. 835); but the privilege has been held to include the right to report special orders for the consideration of individual bills or classes of bills (V, 6774), or the consideration of a specified amendment to a bill and prescribing a mode of considering such amendment. (Speaker Gillett, Apr. 28, 1924, 68th Cong., 1st sess., p. 7375.)

The privilege of the Committee on Ways and Means to report "bills raising revenue" is broadly construed to cover bills relating to the revenue (IV, 3076, 4624, 4625), and if the major feature of the bill relates to revenue other matters in the bill not relating to the revenue but incidental to its main purpose do not destroy the privilege. (Speaker Longworth, Jan. 22, 1927, 69th Cong., 2d sess.). A bill providing for a tariff commission (IV, 4626), a declaratory resolution on a subject relating to the revenue (IV, 4626, 4627), a bill extending the time of payment of a debt incurred by Austria for the purchase of flour from the United States (Speaker Gillett, Mar. 29, 1922, p. 4736, 67th Cong., 2d sess.), a bill amending the drug importation act (Speaker Gillett, May 4, 1922, p. 6332, 67th Cong., 2d sess.), and a bill permitting the admission under parcel post of cigars and cigarettes in smaller packages (Speaker Longworth, Jan. 22, 1927, 69th Cong., 2d sess., p. —) were held not to be within the privilege. In order to come within the privilege the bill must show on its face that it relates to the revenue (Speaker Longworth, Jan. 22, 1927, p. 2121, 69th Cong., 2d sess.).

The right of the Committee on Appropriations to report at any time is confined strictly to general appropriation bills (IV, 4629-4632).

The right of the Committee on the Public Lands to report at any time permits the including of matters necessary to accomplishment of the purposes for which privilege is given (IV, 4633, 4637-4639; 61st Cong., 2d sess., pp. 4334, 4632; 66th Cong., 2d sess., p. 366; 67th Cong., 1st sess., p. 7141).

The privilege of the Committee on Printing is confined to printing for the use of the two Houses, or either of them (IV, 4647-4649).

Privileged reports from the Committee on Accounts are confined entirely to expenditures from the contingent fund (IV, 4640-4643). Resolutions authorizing appropriations from the Treasury directly for compensation of employees (IV, 4645) or fixing the salaries of employees are not privileged. (Speaker Gillett, Feb. 17, 1920, 66th Cong., 2d sess., p. 3013.)

The privilege of the Committee on Rivers and Harbors is confined to the improvement of rivers and harbors, and provisions for the improvement of canals or artificial waterways are not privileged. (Chairman Byrns, Jan. 11, 1919, p. 1263.)

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§ 725.

Rule XI.

The term "general pension bills" is construed to mean bills or legislation general in character, such as extending the provisions of the pension laws to an additional class, as distinguished from bills of a private character. (Speaker pro tempore Walsh, June 21, 1921, p. 2858; June 9, 1922, p. 8483.)

It shall always be in order to call up for consideration a report from the Committee on Rules (except it shall not be called up for consideration on the same day it is presented to the House, unless so determined by a vote of not less than two-thirds of the Members voting, but this provision shall not apply during the last three days of the session), and, pending the consideration thereof, the Speaker may entertain one motion that the House adjourn; but after the result is announced he shall not entertain any other dilatory motion until the said report shall have been fully disposed of. The Committee on Rules shall not report any rule or order which shall provide that business under paragraph 7 of Rule XXIV shall be set aside by a vote of less than two-thirds of the Members present; nor shall it report any rule or order which shall operate to prevent the motion to recommit being made as provided in paragraph 4 of Rule XVI.

The Committee on Rules, "by uniform practice of the House," exercised the privilege of reporting at any time as early as 1888. The right to report at any time is confined to privileged matters. (Speaker Clark, Aug. 15, 1912, p. 5006.) This was probably the survival of a practice which existed as early as 1853 of giving the privilege of reporting at any time to this committee for a session (IV, 4650). In 1890 the committee was included among the committees whose reports were privileged by rule. The present rule was adopted in 1892 (IV, 4621), amended on March 15, 1909, and the matter in parentheses was adopted January 18, 1924.

Although highly privileged, a report from the Committee on Rules is not in order after the House has voted to go into Committee of the Whole (V, 6781). Also a conference report has precedence of it, even when the yeas and nays and previous question have been ordered (V, 6449). If a report from the Committee on Rules contains substantive propositions, a separate vote can be had on each proposition. (Speaker Cannon, Apr. 8, 1908, 60th Cong., 1st sess., p. 4509; Speaker Clark, Apr. 18, 1912, p. 5006; Speaker Gillett, Jan. 18, 1924; Speaker pro tempore Snell, Mar. 27, 1926.)

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XI.

§§ 725A, 726.

In the later practice it has been held that the question of consideration may not be raised against a report from the Committee on Rules (V, 4961-4963). The clause forbidding dilatory motions has been construed strictly (V, 5740-5742), and the motion to commit after the ordering of the previous question has been excluded in the later practice (V, 5593-5601; Speaker Clark, 65th Cong., 1st sess., p. 7849), as have appeals and motions to reconsider (V, 5739).

A special rule providing that a House bill with Senate amendments shall be taken from the Speaker's table, Senate amendments disagreed to, conference agreed to, and that the Speaker shall without intervening motion appoint conferees, is not in violation of clause 56 of Rule XI, since the motion to recommit may be made on the conference report. (Speaker Clark, Oct. 9, 1913, 63d Cong., 1st sess., p. 5522.)

But where the provision of the resolution is to ask for a conference, giving the Senate the right of first acting on the conference report, and providing for the appointment of the conferees without intervening motion, such resolution would be in contravention of the rule because the Senate might reject the conference report, thereby denying the minority of the House any opportunity of making a motion to recommit. (Speaker Clark, Apr. 24, 1916, 64th Cong., 1st sess., Record, p. 6761.)

The Committee on Rules can not report a rule which is aimed strictly or directly at overthrowing Calendar Wednesday or the motion to recommit, but this does not prevent the committee from reporting a resolution couched in general terms which may indirectly ban that ultimate result, such as a resolution providing for six days' suspension of the rules. (Speaker Gillett, May 29, 1920, 66th Cong., 2d sess., p. 7923.)

The Committee on Rules shall present to the House reports concerning rules, joint rules, and order of business within three legislative days of the time when ordered reported by the committee. If such rule or order is not considered immediately it shall be referred to the calendar and if not called up by the member making the report within nine days thereafter, any member designated by the committee may call it up for consideration.

This paragraph was adopted January 18, 1924 (68th Cong., 1st sess.).

§ 726. Committees
(excepting Rules)
not to sit during
sessions of House.

46. No committee, except the Committee on Rules, shall sit during the sitting of the House, without special leave.

This rule was adopted in 1794. The exception for the Committee on Rules was inserted in 1893 (IV, 4546).

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§§ 726A, 727.

Rule XII.

A request that a committee have leave to sit during sessions of the House has no privileged status in the order of business (IV, 4547). Leave for a committee to sit during sessions of the House does not release its members from liability to arrest during a call of the House (IV, 3020).

47. The several elections committees of the House shall make final report to the House in all contested-election cases not later than six months from the first day of the first session of the Congress to which the contestee is elected except in a contest from the Territory of Alaska in which case the time shall not exceed nine months.

§ 726A. Election contests.

This provision was adopted January 18, 1924 (68th Cong., 1st sess.).

RULE XII.

DELEGATES.

1. The House shall elect from among the Delegates one additional member on each of the following committees, viz: Coinage, Weights, and Measures; Agriculture; Military Affairs; the Post Office and Post Roads; Public Lands; Indian Affairs; and Mines and Mining; and two on Territories; and they shall possess in their respective committees the same powers and privileges as in the House, and may make any motion except to reconsider.

§ 727. Powers and privileges of Delegates on the floor and as to committee service.

The first form of this rule was adopted in 1871, and it was perfected by amendments in 1876, 1880, 1887, and 1892 (II, 1297).

Delegates are not usually appointed on committees other than those specified, but there have been instances (II, 1298), and in one case a Delegate was made chairman of a select committee (II, 1299, 1303). In the latter practice Delegates do not vote in committee (II, 1300, 1301).

The law provides that on the floor of the House a Delegate may debate (II, 1290), and he may in debate call a Member to order (II, 1295). He may make any motion which a Member may make except the motion to reconsider (II, 1291, 1292). A Delegate has even moved an impeachment (II, 1303). He may be appointed a teller (II, 1302); but the law forbids him to vote (II, 1290), and he may not object to the consideration of a bill (II, 1293, 1294).

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XIII.

§§ 728, 729.

The office of Delegate was established by ordinance of the Continental Congress and confirmed by a law of Congress (I, 400, 421). The nature of the office has been the subject of much discussion (I, 400, 403, 473); and except as provided by law (I, 431, 526) the qualifications of the Delegate have been a subject of much discussion (I, 421, 423, 469, 470, 473). A territory or district must be organized by law before the House will admit a Delegate (I, 405, 407, 411, 412).

At the organization of the House the Delegates are sworn (I, 400, 401); but the Clerk does not put them on the roll (I, 61, 62).

A Delegate resigns in a communication addressed to the Speaker (II, 1304). He may be arrested and censured for disorderly conduct (II, 1305), but there has been disagreement as to whether he should be expelled by a majority or two-thirds vote (I, 469).

2. The Resident Commissioner to the United States

§ 728. Resident from Porto Rico shall possess the same
Commissioners. powers and privileges as to committee service and in the House as are possessed by Delegates; and shall be competent to serve on the Committee on Insular Affairs as an additional member.

This rule was adopted in 1904 (II, 1306).

RULE XIII.

CALENDARS AND REPORTS OF COMMITTEES.

1. There shall be three calendars to which all business reported from committees shall be referred, viz:

§ 729. Calendars for reports of committees.

First. A Calendar of the Committee of the Whole House on the state of the Union, to which shall be referred bills raising revenue, general appropriation bills, and bills of a public character directly or indirectly appropriating money or property.

Second. A House Calendar, to which shall be referred all bills of a public character not raising revenue nor directly or indirectly appropriating money or property.

Third. A Calendar of the Committee of the Whole House, to which shall be referred all bills of a private character.

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§§ 730, 731.

Rule XIII.

This rule was adopted in 1880; but as early as 1820 a rule was adopted creating calendars for the Committees of the Whole. Bills not requiring consideration in Committee of the Whole were considered when reported, but in 1880 the House Calendar was created to remedy the delays in making reports caused by such consideration (IV, 3115).

A motion to correct an error in referring a bill to the proper calendar presents a question of privilege (III, 2614, 2615); but a mere clerical error in the calendar does not give rise to such a question (III, 2616). A bill improperly reported is not entitled to a place on the calendar (IV, 3117).

A bill on the wrong calendar may be transferred to the proper calendar as of date of original reference by direction of the Speaker. (Speaker Clark, Feb. 12, 1914, 63d Cong., 2d sess., p. 3397; also Jan. 23, 1918, p. 1174.) But the Speaker has no authority to change calendar reference made by the House. (Speaker Clark, Jan. 20, 1919, p. 1769.) Reports from the Court of Claims do not remain on the calendar from Congress to Congress, even when a law seems so to provide (IV, 3298-3302). In determining whether a bill should be placed on the House or Union Calendar, clause 3 of Rule XXIII (sec. 843) should be consulted.

2. All reports of committees, except as provided in clause 56 of Rule XI, together with the views of the minority, shall be delivered to the Clerk for printing and reference to the proper calendar under the direction of the Speaker, in accordance with the foregoing clause, and the titles or subject thereof shall be entered on the Journal and printed in the Record:

§ 730. Nonprivileged reports filed with the Clerk.

§ 731. Adverse reports.

Provided, That bills reported adversely shall be laid on the table, unless the committee reporting a bill, at the time, or any Member within three days thereafter, shall request its reference to the calendar, when it shall be referred, as provided in clause 1 of this rule.

The requirement that reports shall be printed does not mean that the report must be printed before the matter reported is called up for action, and the fact that a report was not printed as originally made to the House does not prevent the consideration of the matter reported. (Speaker Gillett, Dec. 15, 1922, 67th Cong., 2d sess., p. 531.)

3. After a bill which has been favorably reported shall be upon either the House or the Union Calendar, any Member may file with the Clerk a notice that he desires such a bill placed upon a special calendar to be known as the "Consent Calendar." On the first Monday of each month immediately after the reading of the Journal, and on the third Monday of each month immediately after the disposition of motions to instruct committees which may be called up, the Speaker shall direct the Clerk to call the bills which have been for three days upon the "Consent Calendar." Should objection be made to the consideration of any bill so called, it shall immediately be stricken from such calendar, but such bill may be restored to the calendar at the instance of the Member, and if again objected to by three or more Members, it shall be immediately stricken from such calendar, and shall not thereafter be placed thereon: *Provided*, That the same bill shall not be called twice on the same legislative day.

This rule was adopted March 15, 1909, amended January 18, 1924, and December 7, 1925.

Bills must be on the printed calendar to be called up. (Dec. 20, 1909, 61st Cong., 2d sess., pp. 264-265.) One Member having reserved the right to object to the consideration of a bill, any Member may object. (May 2, 1910, 61st Cong., 2d sess., p. 5667.) Before debate bills can be passed over on calendar by unanimous consent, but after discussion can not be passed over. (Feb. 7, 1910, 61st Cong., 2d sess., p. 1550.) When a House bill is on the Consent Calendar, by unanimous consent the House committee may be discharged from the consideration of a Senate bill on the same subject, and the Senate bill substituted in lieu of the House bill. (62d Cong., 1st sess., pp. 2171-2172.)

When a bill is made a special order (IV, 3217-3224), or when unanimous consent is given for its consideration (IV, 4823), the effect is to discharge

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§§ 733-734.

Rule XIV.

the Committee of the Whole and bring the bill before the House itself for its consideration (IV, 3216), and in such event the bill is considered "in the House as in the Committee of the Whole." (Feb. 16, 1920, 66th Cong., 2d sess., p. 2964.)

This rule does not preclude the Speaker from recognizing Members to suspend the rules before completion of the Consent Calendar. (Decided by House, 62d Cong., 3d sess., p. 4454; also held by Speaker Clark, Oct. 5, 1914, 63d Cong., 2d sess., Record, p. 16182, and by Speaker Gillett, Sept. 4, 1919, p. 5128.) Recognition to suspend the rules does not preclude the continuation of the call of the calendar later in the day. (Speaker pro tempore Crisp, Jan. 7, 1919, p. 1120.)

4. There shall also be a Calendar of Motions to

§ 733. Motion to
discharge.

Instruct Committees, as provided in clause 4 of Rule XXVII.

§ 733A. Calendars
printed.

5. Calendars shall be printed daily.

This rule was adopted in the Sixty-second Congress, April 5, 1911.

RULE XIV.

OF DECORUM AND DEBATE.

1. When any Member desires to speak or deliver

§ 734. Obtaining
the floor for debate;
and relevancy and
decorum therein.

any matter to the House, he shall rise and respectfully address himself to "Mr. Speaker," and, on being recognized, may address the House from any place on the floor or from the Clerk's desk, and shall confine himself to the question under debate, avoiding personality.

This rule was adopted in 1880, but was made up, in its main provisions, from older rules, which dated from 1789 and 1811 (V, 4979).

It is a general rule that a motion must be made before a Member may proceed in debate (V, 4984, 4985), and this motion may be required to be reduced to writing (V, 4986). The withdrawal of a motion precludes fur-

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XIV.

§§ 734A, 735.

ther debate on it (V, 4989). But sometimes when a communication or a report has been before the House it has been debated before any specific motion has been made in relation to it (V, 4987, 4988). In a few cases, such as conference reports and reports from the Committee of the Whole, the motion to agree is considered as pending without being offered from the floor (IV, 4896; V, 6517).

In presenting a question of personal privilege the Member is not required in the first instance to make a motion or offer a resolution, but such is not the rule in presenting a case involving the privileges of the House (III, 2546, 2547). Personal explanations merely are made by unanimous consent (V, 5065).

A motion must also be stated by the Speaker or read by the Clerk before debate may begin (V, 4982, 4983, 5304).

In addressing the House the Member should also address the Chair (V, 4980).

A Member having the floor may not be taken off his feet by an ordinary motion, even the highly privileged motion to adjourn (V, 5369, 5370); but he may be interrupted for a conference report (V, 6451). It is a custom also for the Speaker to request a Member to yield for the reception of a message. A Member may yield the floor for a motion to adjourn or that the Committee of the Whole rise without losing his right to continue when the subject is again continued (V, 5009-5013). A Member may also resume his seat while a paper is being read in his time without losing his right to the floor (V, 5015). A Member who, having the floor, moved the previous question was permitted to resume the floor on withdrawing the motion (V, 5474). But a Member may not yield to another Member to offer an amendment without losing the floor (V, 5021, 5030, 5031). A Member desiring to interrupt another in debate should address the Chair for permission of the Member speaking (V, 5006), but the latter may exercise his own discretion as to whether or not he will yield (V, 5007, 5008). (Speaker Clark, June 11, 1917, 65th Cong., 1st sess., p. 3459.)

The Speaker may of right speak from the Chair on questions of order and be first heard (II, 1367), but with this exception he may speak from the Chair only by leave of the House and on questions of fact (II, 1367-1372). On occasions comparatively rare Speakers have called Members to the Chair

§ 734A. Interruption of a Member in debate.

§ 735. Speaker in debate.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 736, 737.

Rule XIV.

and participated in debate, usually without asking consent of the House (II, 1367, 1368, 1371; III, 1950; V, 6097).

It has always been held, and generally quite strictly, that in the House the Member must confine himself to the subject under debate (V, 5043-5048). On a motion to amend the debate is confined to the amendment and may not include the general merits of the bill (V, 5049-5051).

While the Speakers have entertained appeals from their decisions as to irrelevancy, they have held that such appeals were not debatable (V, 5056-5063).

In Committee of the Whole House on the state of the Union during general debate the Member need not confine himself to the subject (V, 5233-5238); but this privilege does not extend to the Committee of the Whole House (V, 5239). And in all cases the five-minute debate in Committee of the Whole is confined to the subject (V, 5240-5256).

§ 737. Speaker's
power of
recognition.

2. When two or more Members rise at once, the Speaker shall name the Member who is first to speak; * * *

This rule was adopted in 1789 (V, 4978).

In the early history of the House, when business proceeded on presentation by individual Members, the Speaker recognized the Member who arose first; and in case of doubt there was an appeal from his recognition (II, 1429-1434). But as the membership and business of the House increased it became necessary to establish and adhere to a fixed order of business, and recognitions, instead of pertaining to the individual Member, necessarily came to pertain to the bill or other business which would be before the House under the rule regulating the order of business. Hence the necessity that the Speaker should not be compelled to heed the claims of Members as individuals was expressed in 1879 in a report from the Committee on Rules, which declared that "in the nature of the case discretion must be lodged with the presiding officer" (II, 1424). And in 1881 the Speaker declined to entertain an appeal from his decision on a question of recognition (II, 1425-1428), establishing thereby a practice which continues.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XIV.

§ 738, 739.

Although there is no appeal from the Speaker's recognition, he is not a free agent in determining who is to have the floor. The practice of the House establishes rules from which he may not depart. When the order of business brings before the House a certain bill he must first recognize, for motions of its disposition, the Member who represents the committee which has reported it (II, 1447). This is not necessarily the chairman of the committee, for a chairman who, in committee, has opposed the bill, must yield the prior recognition to a member of his committee who has favored the bill (II, 1449). Usually, however, the chairman has charge of the bill and is entitled at all stages to prior recognition for allowable motions intended to expedite it (II, 1452, 1457). This principle does not, however, apply to the Chairman of the Committee of the Whole (II, 1453). The Member who originally introduces the bill which a committee reports has no claims to recognition as opposed to the claims of the members of the committee, but in cases where a proposition is brought directly before the House by a Member the mover is entitled to prior recognition for motions and debate (II, 1446, 1454). And this principle applies to the makers of certain motions. Thus, the Member on whose motion the enacting clause of a bill is stricken out in Committee of the Whole is entitled to prior recognition when the bill is reported to the House (V, 5337), and in a case where a Member had raised an objection in the joint meeting to count the electoral vote the Speaker recognized him first when the Houses had separated to consider the objection (III, 1956). But a Member may not, by offering a debatable motion of higher privilege than the pending motion, deprive the Member in charge of the bill of possession of the floor for debate (II, 1460-1463). (Speaker Clark, July 5, 1918, p. 8711.) The Member in charge of the bill and having the floor may demand the previous question, although another Member may propose to offer a motion of higher privilege; but the motion of higher privilege must be put before the previous question (V, 5480). The fact that a Member has the floor on one matter does not necessarily entitle him to prior recognition on a motion relating to another matter (II, 1464). It is because the Speaker is governed by these usages that he often asks, when a Member seeks recognition, "For what purpose does the gentleman rise?" By this question he determines whether the Member proposes business or a motion which is entitled to precedence.

When an essential motion made by the Member in charge of the bill is decided adversely the right to prior recognition passes to the Member leading the opposition to the motion (II, 1465-1468). The control of the measure passes under this principle when the House disagrees to the

§ 739. Loss of right to recognition by Member in charge.

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§§ 740-742.

Rule XIV.

recommendation of the committee reporting the bill (II, 1469-1472), when the Committee of the Whole reports a bill adversely (IV, 4897), and, in most cases, when the House disagrees to a conference report (II, 1473-1477; V, 6396). But the mere defeat of an amendment proposed by the Member in charge does not cause right to prior recognition to pass to the opponents (II, 1478, 1479).

In debate the members of the committee—except the Committee of the Whole (II, 1453)—are entitled to priority of recognition for debate (II, 1438, 1448); but a motion to lay a proposition on the table is in order before the Member entitled to prior recognition for debate has begun his remarks (V, 5391-5395). (Speaker Clark, 63d Cong., 1st sess., p. 2539; Speaker Gillett, Aug. 20, 1921, p. 5358.)

In recognizing for general debate the Chair alternates between those favoring and those opposing the pending matter, preferring members of the committee reporting the bill (II, 1439-1444). When a member of the committee has occupied the floor in favor of a measure a Member opposing should be recognized next, even though he be not a member of the committee (II, 1445). The principle of alternation is not insisted on rigidly where a limited time is controlled by Members, as in the "forty minutes" of debate on motions for suspension of the rules and the previous question (II, 1442).

As to motions to suspend the rules, which are in order on two days each month, the Speaker exercises a discretion to decline to recognize (V, 6791-6794, 6845). He also may decline to recognize a Member who desires to ask unanimous consent to set aside the rules in order to consider a bill not otherwise in order, this being his way of signifying his objection to the request. But this authority does not extend to proceedings under Rule XIII, § 3.

2. * * * and no Member shall occupy more than one hour in debate on any question in the House or in committee, except as further provided in this rule.

§ 742. The hour rule in debate.

This rule dates from 1841, when the increase of membership had made it necessary to prevent the making of long speeches which sometimes occupied three or four hours each (V, 4978).

It applies to debate on a question of privilege, as well as to debate on other questions (V, 4990); and when the time of debate has been placed within the control of those representing the two sides of a question it must be assigned to Members in accordance with this rule (V, 5004, 5005). (Chairman Tilson, Nov. 24, 1922, 67th Cong., 3d sess., p. 143.)

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Rule XIV.

§§ 743, 744.

3. The Member reporting the measure under consideration from a committee may open and close, where general debate has been had thereon; and if it shall extend beyond one day, he shall be entitled to one hour to close, notwithstanding he may have used an hour in opening.

§ 743. The opening and closing of debate.

This rule was adopted in 1847 and perfected in 1880 (V, 4996).

In the later practice this right to close may not be exercised after the previous question is ordered (V, 4997-5000).

4. If any Member, in speaking or otherwise, transgress the rules of the House, the Speaker shall, or any Member may, call him to order; in which case he shall immediately sit down, unless permitted, on motion of another Member, to explain, and the House shall, if appealed to, decide on the case without debate; if the decision is in favor of the Member called to order, he shall be at liberty to proceed, but not otherwise; and, if the case require it, he shall be liable to censure or such punishment as the House may deem proper.

§ 744. The call to order.

This rule was adopted in 1789, and amended in 1822 and 1880 (V, 5175).

The Speaker may call a Member to order without suggestion from the floor (V, 5154, 5161-5163, 5192); but except for naming him may not otherwise censure or punish him (II, 1345). A Delegate may call a Member to order (II, 1295).

When a Member is called to order under this rule it is the practice to test the opinion of the House by a motion "that the gentleman be allowed to proceed in order" (V, 5188, 5199); but a motion that the Member be permitted to explain has been held to have precedence, even in a case where the words have been taken down (V, 5187). A Member called to order and held to be out of order loses the floor (V, 5196-5199) and may not proceed, even on yielded time (V, 5147), but this does not prevent the offending Member from exercising his right to vote or to demand the yeas and nays. (Mar. 2, 1923, p. 5241.)

The House has censured Members for disorderly words (II, 1253, 1254, 1259, 1305).

5. If a Member is called to order for words spoken in debate, the Member calling him to order shall indicate the words excepted to, and they shall be taken down in writing at the Clerk's desk and read aloud to the House; but he shall not be held to answer, nor be subject to the censure of the House therefor, if further debate or other business has intervened.

§ 745. Words
taken down.

This rule was adopted in 1837, with amendment in 1880. But in 1808 the practice of writing down objectionable words had been established, and the rule was adopted to prevent the taking down of words after intervening business (V, 5177).

When a Member denies that the words taken down are the exact words used by himself, the question as to the words is put to the House for decision (V, 5179, 5180). After the Speaker has decided that words taken down are out of order, a motion that the Member be permitted to explain is in order before the motion that he be permitted to proceed is in order (V, 5187).

When the disorderly words are spoken in the Committee of the Whole they are taken down as in the House and read at the Clerk's desk, whereupon the committee rises and reports them to the House (II, 1257-1259, 1348); and it is not in order as a question of privilege in the House to propose censure of a Member for disorderly words spoken in Committee of the Whole but not taken down or reported therefrom (V, 5202). Words so taken down may be withdrawn only by unanimous consent. (Chairman Foster, June 3, 1918, p. 7316.)

In certain exceptional cases, as when disorderly words are part of an occurrence constituting a breach of privilege (II, 1657), or when a Member's language has been investigated by a committee (II, 1655), or when he has reiterated on the floor certain published charges (III, 2637), or when he has uttered words alleged to be treasonable (II, 1252), the House has proceeded to censure or other action although business may have intervened.

6. No Member shall speak more than once to the same question without leave of the House, unless he be the mover, proposer, or introducer of the matter pending, in which case he shall be permitted to speak in reply, but not until every Member choosing to speak shall have spoken.

§ 746. Member to
speak but once
to the same
question.

This rule was adopted in 1789, and amended in 1840 (V, 4991).

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Rule XV.

§§ 747, 748.

A Member who has spoken once to the main question may speak again to an amendment (V, 4993, 4994). It is too late to make the point that a Member has spoken already if no one claims the floor until he has made some progress in his speech (V, 4992). The right to close may not be exercised after the previous question has been ordered (V, 4997-5000). The right to close does not belong to a Member who has merely moved to reconsider the vote on a bill which he did not report (V, 4995). The right of a contestant in an election case to close when he is permitted to speak in the contest has been a matter of discussion (V, 5001).

7. While the Speaker is putting a question or addressing the House no Member shall walk out of or across the hall, nor, when a Member is speaking, pass between him and the Chair; and during the session of the House no Member shall wear his hat, or remain by the Clerk's desk during the call of the roll or the counting of ballots, or smoke upon the floor of the House; and the Sergeant-at-Arms and Doorkeeper are charged with the strict enforcement of this clause. Neither shall any person be allowed to smoke upon the floor of the House at any time.

This rule is made up of provisions adopted in 1789, 1837, 1871, and 1896. Originally Members wore their hats during sessions, as in Parliament, and the custom was not abolished until 1837 (II, 1136).

RULE XV.

ON CALLS OF THE ROLL AND HOUSE.

1. Upon every roll call the names of the Members shall be called alphabetically by surname, except when two or more have the same surname, in which case the name of the State shall be added; and if there be two such Members from the same State, the whole name shall be called, and after the roll has been once called, the Clerk shall call in their alphabetical order the

§ 748. Call of the roll for the yea-and-nay vote.

names of those not voting; and thereafter the Speaker shall not entertain a request to record a vote or announce a pair unless the Member's name has been noted under clause 3 of this rule.

The first form of this rule was adopted in 1789, and amendments were added in 1870, 1880, and 1890 (V, 6046).

The names of Members who have not been sworn are not entered on the roll from which the yeas and nays are called for entry on the Journal (V, 6048).

Commencing in 1879 the Clerk, in calling the roll, called Members by the surnames with the prefix "Mr." instead of calling the full names (V, 6047), but since the Sixty-second Congress the practice has been discontinued in the interest of brevity. The Speaker's name is not on the voting roll and is not ordinarily called (V, 5970). When he votes his name is called at the close of the roll (V, 5965). In case of a tie which is revealed by a correction of the roll, he has voted after intervening business or even on another day (V, 5969, 6061-6063). Where the Speaker through an error of the Clerk in reporting the yeas and nays announces a result different from that actually had, the status of the question is governed by the vote as recorded and subsequent announcement by the Speaker of the changed result is authoritative, or he may entertain a motion for correction of the Journal in accordance with the vote as finally ascertained. (Speaker Clark, June 28, 1918, p. 8422.)

A Member who has failed to respond when his name was called may not as a constitutional right demand that his vote be recorded before the announcement of the result (V, 6066-6068), even if he has refrained from voting because of a misunderstanding as to a pair (V, 6081), or because his attention was distracted when his name was called (V, 6070). But when a Member declares that he was listening when his name should have been called and failed to hear it, he is permitted to record his vote (V, 6071, 6072). The Speaker may not permit a Member to answer "present" at the conclusion of a roll call (V, 6069) unless there be a question as to a quorum. Before the announcement of the result (V, 6064), the Speaker, in his discretion, may order the vote to be recapitulated (V, 6049, 6050).

Before the result of a vote has been finally and conclusively pronounced by the Chair, but not thereafter, a Member may change his vote (V, 5931-5933, 6093, 6094); and a Member who has answered "present" may change it to "yea" or "nay" (V, 6060). But a vote given by a Member may not be withdrawn without leave of the House (V, 5930).

When a vote actually given fails to be recorded (V, 6061-6063) the Member may, before the approval of the Journal, demand as a matter of right that correction be made (V, 5969). But statements of other Members as to alleged errors in a recorded vote must be very definite and positive to justify the Speaker in ordering a change of the roll (V, 6064, 6099).

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§§ 750-752,

When once begun the roll call may not be interrupted even by a motion to adjourn (V, 6053), a parliamentary inquiry, a question of personal privilege (V, 6058, 6059), the arrival of the time fixed for another order of business (V, 6056), or for a recess (V, 6054, 6055), or the presentation of a conference report (V, 6443). But it is interrupted for the reception of messages and by the arrival of the hour fixed for adjournment sine die (V, 6715-6718). Incidental questions arising during the roll call, such as the refusal of a Member to vote (V, 5946-5948), are considered after the completion of the call and before the announcement of the vote (V, 6059).

2. In the absence of a quorum, fifteen Members, including the Speaker, if there is one, shall be authorized to compel the attendance of absent Members, and in all calls of the House the doors shall be closed, the names of the Members shall be called by the Clerk, and the absentees noted; and those for whom no sufficient excuse is made may, by order of a majority of those present, be sent for and arrested, wherever they may be found, by officers to be appointed by the Sergeant-at-Arms for that purpose, and their attendance secured and retained; and the House shall determine upon what condition they shall be discharged. Members who voluntarily appear shall, unless the House otherwise direct, be immediately admitted to the Hall of the House, and they shall report their names to the Clerk to be entered upon the Journal as present.

The essential portions of this rule were adopted in 1789 and 1795, with minor amendments in 1888 and 1890 (IV, 2982). In times of obstruction it has not been found wholly efficient, and for most cases is superseded by section 4 of this rule.

Under this rule a call may not be ordered by less than 15 (IV, 2983), and it must be ordered by majority vote, a minority of 15 or more not being sufficient (IV, 2984). A quorum not being present no motion is in order but for a call of the House or to adjourn (IV, 2950, 2988).

§ 751. The call of the House in the old form.

§ 752. Ordering and conducting the call.

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§§ 753, 754.

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On the roll call the names of Members are called alphabetically by surname (V, 6046). This roll call may not be interrupted by a motion to dispense with further proceedings under the call (IV, 2992), and a recapitulation of the names of those who appear after their names have been called may not be demanded (IV, 2993). But during proceedings under the call the roll may be ordered to be called again by those present (IV, 2991).

During a call less than a quorum may revoke leaves of absence (IV, 3003, 3004) and excuse a Member from attendance (IV, 3000, 3001), but they may not grant leaves of absence (IV, 3002). The roll is sometimes called for excuses, and motions to excuse are in order during this call (IV, 2997), but neither the motion to excuse nor an incidental appeal are debatable (IV, 2999). After the roll has been called for excuses and the House has ordered the arrest of those who are unexcused, a motion to excuse is in order when the absentee is brought to the bar (IV, 3012).

An order of arrest for absent Members may be made after a single calling of the roll (IV, 3015, 3016), and a warrant issues on direction of those present, such motion having precedence of a motion to dispense with proceedings under the call (IV, 3036). The Sergeant-at-Arms is required to arrest Members wherever they may be found (IV, 3017), and leave for a committee to sit during sessions does not release its Members from liability to arrest (IV, 3020). A Member who appears and answers is not subject to arrest (IV, 3019), and in a case where a Member complained of wrongful arrest the House ordered the Sergeant-at-Arms to investigate and amend the return of his warrant (IV, 3021). A Member once arrested having escaped it was held that he might not be brought back on the same warrant (IV, 3022).

Arrested Members are arraigned at the bar and a quorum may order the arraignment at a future day (IV, 3030-3035). Those present on a call may prescribe a fine as a condition of discharge, but this penalty has been of rare occurrence (IV, 3013, 3014, 3025).

The call of the House is ended by a motion "to dispense with further proceedings under the call," which may be agreed to by less than a quorum as well as by a quorum (IV, 3038, 3040), and when so agreed to ends all proceedings of the call, even if they have not begun (IV, 3040). But the motion is not in order pending a motion for arrest (IV, 3029, 3037).

During the call, which in later practice has been invoked only in absence of a quorum, incidental motions may be agreed to by less than a quorum (IV, 2994, 3029). This includes motions for the previous question (V, 5458), to reconsider and to lay the motion to reconsider on the table (V, 5607, 5608), to adjourn, which is in order even in the midst of the call of the roll for excuses (IV, 2998), and an appeal from a decision of the Chair (IV, 3010, 3037).

§ 753. Arrest of Members.

§ 754. Motions during a call.

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Rule XV.

§§ 755, 756.

The yeas and nays may also be ordered (IV, 3010), but a question of privilege may not be raised unless it be something connected immediately with the proceedings (III, 2545). Motions not strictly incidental to the call are not admitted, as for a recess (IV, 2995, 2996), to excuse a Member from voting even when otherwise in order (IV, 3007), to enforce the statute relating to deductions of pay of Members for absence (IV, 3011), to construe a rule or make a new rule (IV, 3008), or to order a change of a Journal record (IV, 3009). A motion for a call of the House is not debatable. (Speaker Clark, 63d Cong., 1st sess., p. 5653.)

3. On the demand of any Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk and recorded in the Journal, and reported to the Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business.

§ 755. Count of those not voting to make a quorum of record on a roll call.

This rule was adopted in 1890 (IV, 2905), but is merely put in form of rule a principle already established by a decision of the Chair (IV, 2895). It was much in use in the first years after its adoption (IV, 2620, 2905-2907); but with the decline of obstruction in the House and the adoption of section 4 of this rule the necessity for its use has disappeared to a large extent, and Speaker may direct Clerk to note names of Members under this rule even on vote for which a quorum is not necessary. (Speaker pro tempore Sherley, 63d Cong., 1st sess., p. 5506.)

4. Whenever a quorum fails to vote on any question, and a quorum is not present and objection is made for that cause, unless the House shall adjourn there shall be a call of the House, and the Sergeant-at-Arms shall forthwith proceed to bring in absent Members, and the yeas and nays on the pending question shall at the same time be considered as ordered. The Clerk shall call the roll, and each Member as he answers to his name may vote on the pending question, and, after the roll call is completed, each Member arrested shall

§ 756. The call of the House in the new form.

be brought by the Sergeant-at-Arms before the House, whereupon he shall be noted as present, discharged from arrest, and given an opportunity to vote and his vote shall be recorded. If those voting on the question and those who are present and decline to vote shall together make a majority of the House, the Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the majority of those voting shall appear. And thereupon further proceedings under the call shall be considered as dispensed with. At any time after the roll call has been completed, the Speaker may entertain a motion to adjourn, if seconded by a majority of those present, to be ascertained by actual count by the Speaker; and if the House adjourns, all proceedings under this section shall be vacated.

This rule was adopted in 1896 (IV, 3041).

It applies only to votes wherein a quorum is required, and hence does not apply to a motion to adjourn (IV, 3042), or to a call when there is no question pending (IV, 2990).

Under this rule the roll is called over twice, and those appearing after their names are called may vote (IV, 3052). A motion to adjourn may be made before the call begins (IV, 3050). After the roll has been called, and while the proceedings to obtain a quorum are going on, motions to excuse Members are in order (IV, 3051). The Sergeant-at-Arms is required to detain those who are present and bring in absentees (IV, 3045-3048), and he does this without the authority of a resolution adopted by those present (IV, 3049). There is doubt as to whether or not a warrant is necessary, but it is customary for the Speaker to issue one on the authority of the rule (IV, 3043). When arrested, Members are arraigned at the bar, and either vote or are noted as present, after which they are discharged (IV, 3044). When a quorum fails to vote on a yea-and-nay vote on a motion which requires a quorum to be present, and a quorum is not present, the Chair takes notice of the fact, and unless the House adjourns, a call of the House is ordered by the Chair under this rule, and the vote is taken on the question de novo (IV, 3045, 3052). (Speaker Gillett, Dec. 20, 1921.) An automatic roll call results under this rule when the objection that a quorum is not present and voting is made after a viva voce vote. (Mar. 8, 1922, 67th Cong., 2d sess., p. 3585.)

§ 757. Conduct of
the call in the
new form.

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§§ 758-760.

RULE XVI.

ON MOTIONS, THEIR PRECEDENCE, ETC.

1. Every motion made to the House and entered by the Speaker shall be reduced to writing on the demand of any Member, and shall be entered on the Journal with the name of the Member making it, unless it is withdrawn the same day.

§ 758. Motions reduced to writing and entered on the Journal.

This rule was made up in 1880 of old rules adopted in 1789 and 1806 (V, 5300).

Because of this rule it has been held not in order to amend or strike out a Journal entry setting forth a motion exactly as made (IV, 2783, 2789). A motion not entertained is not entered on the Journal (IV, 2813, 2844-2846).

2. When a motion has been made, the Speaker shall state it or (if it be in writing) cause it to be read aloud by the Clerk before being debated, and it shall then be in possession of the House, but may be withdrawn at any time before a decision or amendment.

§ 759. Stating and withdrawing of motions.

The provisions of this rule were adopted first in 1789. At that time a second was required for every motion, but in practice this requirement became obsolete very early, and it was dropped from the rule in 1880 (V, 5304).

The House always insists that the motion shall be stated or read before debate shall begin (V, 4983). It is the duty of the Speaker to put a motion in order under the rules and practice without passing on its constitutional effect (IV, 3550). In a case wherein a clerk presiding during organization of the House declined to put a question, a Member-elect put the question from the floor (I, 67).

Under certain circumstances, a Member may make a double motion (V, 5637).

Even after the affirmative side has been taken on a division the withdrawal of a motion has been permitted (V, 5348), also after a viva voce vote and the ordering and appointment of tellers (V, 5349). While the House was dividing on a second of the previous question (this second is no longer

§ 760. Conditions of withdrawal of motions.

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§§ 761, 762.

required) on a motion to refer a resolution, the Member was permitted to withdraw the resolution (V, 5350); also a motion was once withdrawn after the previous question had been ordered on an appeal from a decision of a point of order as to the motion (V, 5356). A motion to suspend the rules may be withdrawn at any time before a second is ordered (V, 6844), even on another suspension day (V, 6844). A motion may be withdrawn although an amendment may have been offered and be pending (V, 5347), and in the House an amendment, whether simple or in the nature of a substitute, may be withdrawn at any time before amendment or decision is had thereon; but the rule is otherwise in Committee of the Whole (V, 5753).

A "decision" which prevents withdrawal may consist of the ordering of the yeas and nays (V, 5353), either directly on the motion or on a motion to lay it on the table (V, 5354), the ordering of the previous question (V, 5355), or the demand therefor (V, 5489), or the refusal to lay on the table (V, 5351, 5352).

A Member having the right to withdraw a motion before a decision thereon has the resulting power to modify the motion (V, 5358). A motion being withdrawn, all proceedings on an appeal arising from a point of order related to it fell thereby (V, 5356).

3. When any motion or proposition is made, the question, Will the House now consider it? shall not be put unless demanded by a Member.

§ 761. The question of consideration.

The question of consideration is an outgrowth of the practice of the House, and was in use as early as 1808. The rule was adopted in 1817 in order to limit its use. It is the means by which the House protects itself from business which it does not wish to consider (V, 4936). The refusal to consider does not amount to the rejection of a bill or prevent its being brought before the House again (V, 4940). It has once been held that a question of privilege which the House has refused to consider may be brought up again on the same day (V, 4942).

A Member may demand the question of consideration, although the Member in charge of the bill may claim the floor for debate (V, 4944, 4945); but after debate has begun the demand may not be made (V, 4937-4939). It has been admitted, however, after the making of a motion to lay on the table (V, 4943). The demand for the question of consideration may not be prevented by a motion for the previous question (V, 5478), but after the previous question is ordered it may not be demanded (V, 4965, 4966), even on another day, unless other business has intervened (V, 4967,

§ 762. Raising the question of consideration.

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§§ 763-765.

4968). The question of consideration being pending, a motion to refer is not in order (V, 5554).

The intervention of an adjournment does not destroy the right to raise the question of consideration (V, 4946), but this right did not hold good in a case where the yeas and nays had been ordered and the House had adjourned pending the failure of a quorum on the roll call (V, 4949). A question of consideration undisposed of at an adjournment does not recur as unfinished business on a succeeding day (V, 4947, 4948). It is not in order to reconsider the vote whereby the House refuses to consider a bill (V, 5626, 5627).

The question of consideration may be demanded against a matter of the highest privilege, such as the right of a Member to his seat (V, 4941); but not against a bill returned with the President's objections (V, 4969, 4970). It may not be raised against a proposition before the House for reference merely, as a petition (V, 4964). It may not be demanded against a class of business in order under a special order or rule, but may be demanded against each bill individually (IV, 3308, 3309; V, 4958, 4959). It may be raised against a bill which has been made a special order (IV, 3175; V, 4953-4957), unless the order provides for immediate consideration (V, 4960); but it may not be raised against a report from the Committee on Rules relating to the order of considering individual bills (V, 4961-4963).

The question of consideration may not be raised on a motion relating to the order of business (V, 4971-4976) or a motion to discharge a committee (V, 4977). On a motion to go into Committee of the Whole to consider a bill the House expresses its wish as to consideration by its vote on this motion (V, 4973-4976).

A point of order which, if sustained, might prevent the consideration of a bill should be made and decided before the question of consideration is put (V, 4950, 4951); but if the point relates merely to the manner of considering, it should be passed on afterwards (V, 4950). In general, after the House has decided to consider, a point of order raised with the object of preventing consideration, in whole or part, comes too late (IV, 4598; V, 4952, 6912-6914).

4. When a question is under debate, no motion shall be received but to adjourn, to lay on the table, for the previous question (which motions shall be decided without debate), to postpone to a day certain,

§ 765. Precedence
of privileged
motions.

to refer, or to amend, or postpone indefinitely; which several motions shall have precedence in the foregoing order; and no motion to postpone to a day certain, to refer, or to postpone indefinitely, being decided, shall be again allowed on the same day at the same stage of the question. After the previous question shall have been ordered on the passage of a bill or joint resolution one motion to recommit shall be in order, and the Speaker shall give preference in recognition for such purpose to a Member who is opposed to the bill or joint resolution.

The first form of this rule appears in 1789; but amendments have been made at various times (V, 5301), including one on March 15, 1909.

Its application is confined to cases wherein a question is "under debate" (V, 5379). It has been held that a question ceases to be "under debate" after the previous question has been demanded (V, 5419). But with the exception of the motion to adjourn it is obvious that the motions specified in this rule can only be used when some question is "under debate."

The motion to adjourn not only has the highest precedence when a question is under debate, but, with certain restrictions, it has the highest privilege under all other conditions. Even questions of privilege (III, 2521) and the motion to reconsider yield to it (V, 5605), and a conference report may defer it only until the report is before the House (V, 6451-6453). The motion to adjourn may be made after the yeas and nays are ordered and before the roll call has begun (V, 5366), before the reading of the Journal (IV, 2757), or when the Speaker is absent and the Clerk is presiding (I, 228). But the motion to adjourn may not interrupt a Member who has the floor (V, 5369, 5370), or a call of the yeas and nays (V, 6053), or the actual act of voting by other means (V, 5360), or be made after the House has voted to go into Committee of the Whole (IV, 4728; V, 5367, 5368), or defer the right of a Member to take the oath (I, 622); and when no question is under debate it may not displace a motion to fix the day to which the House shall adjourn (V, 5381).

When the House has fixed the hour of daily meeting, the motion to adjourn may not be amended (V, 5754) as by specifying a particular day (V, 5360) or hour (V, 5364), or by stating the purposes of adjournment

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(V, 5371, 5372); but when the hour of daily meeting is not fixed, the motion to adjourn may fix it (V, 5362, 5363). A motion to adjourn is in order in simple form only. (Speaker Gillett, Aug. 28, 1919, p. 4469.) The motion to adjourn is not debatable (V, 5359), and is not in order in Committee of the Whole (IV, 4716). After the motion is made neither another motion nor an appeal may intervene before the taking of the vote (V, 5361).

The motion to fix the day to which the House shall adjourn was formerly included within the rule as to precedence of motions, but with the motion for a recess was dropped because of the facility with which it was used in obstructive tactics (V, 5301, 5379). No question being under debate, a motion to fix the day to which the House should adjourn, already made, was held not to give way to a motion to adjourn (V, 5381). But if the motion to adjourn be made first, the motion to fix the day or for a recess is not entertained (V, 5302). The motion to fix the day is not debatable under the practice of the House (V, 5379, 5380). (Speaker Clark, July 6, 1918, p. 8835.)

The motion to lay on the table is used in the House for a final, adverse disposition of a matter without debate (V, 5389), and is in order before the Member entitled to prior recognition for debate has begun his remarks (V, 5391-5395). (Speaker Gillett, Aug. 20, 1921.) But a question of privilege laid on the table may be taken therefrom on motion made and agreed to by the House (V, 5438). The motion to lay on the table has the precedence given it by the rule, but may not be made after the previous question is ordered (V, 5415-5422), or even after the yeas and nays have been ordered on the demand for the previous question (V, 5408, 5409).

When a bill is laid on the table, pending motions connected therewith go to the table also (V, 5426, 5427); and when a proposed amendment is laid on the table the pending bill goes there also (V, 5423), and this rule holds good as to a House bill with Senate amendments (V, 5424). But there are exceptions to this rule, viz, the Journal does not accompany a proposed amendment to the table (V, 5435, 5436); the original question does not accompany an appeal (V, 5434); a resolution does not accompany another resolution with which it is connected, or a preamble (V, 5428, 5430); and a petition does not accompany the motion to receive it when the latter is laid on the table (V, 5431-5433); a bill does not accompany a motion to instruct conferees which is laid on the table. (Speaker pro tempore Walsh, Nov. 10, 1921, p. 7620.)

A motion to lay on the table a motion to reconsider vote by which an amendment to a resolution had been agreed to would not carry the resolution to the table. (Speaker Clark, 63d Cong., 1st sess., p. 2348.)

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The motion is not in order in Committee of the Whole (IV, 4719, 4720). It may not be amended (V, 5754) or applied to the motions for the previous question (V, 5410-5411), to suspend the rules (V, 5405), to commit after the previous question is ordered (V, 5412-5414; 66th Cong., 2d sess., p. 7708), or to any motion relating to the order of business (V, 5403, 5404), except the motion to discharge a committee (V, 5407). In one instance the motion to lay on the table was applied to the ordinary motion to refer (V, 5433); but this seems out of harmony with the general trend of rulings, which indicate that the secondary or privileged motions for disposal of a matter should not be laid on the table.

As indicated in the rule, the motions to postpone are two in number and distinct: One to postpone to a day certain; the other to postpone indefinitely. Each must apply to the whole and not a part of the pending proposition (V, 5306). Neither may be entertained after the previous question is ordered (V, 5319-5321), or be applied to a special order providing for the consideration of a class of bills (V, 4958); but when a bill comes before the House under the terms of a special order which assigns a day merely, a motion to postpone may be applied to the bill (IV, 3177-3182). The motion is not used in Committee of the Whole, but a motion that a bill be reported with the recommendation that it be postponed is in order in that committee (IV, 4765) and is a preferential motion. (Chairman Russell, Feb. 13, 1918, p. 2076.) It has been held in order to postpone an appeal. (61st Cong., 2d sess., p. 3247.) A bill under consideration in the morning hour may not be made a special order by a motion to postpone to a day certain (IV, 3164).

The motion to postpone to a day certain may not specify the hour (V, 5307). The motion may be amended (V, 5754). It is debatable within narrow limits only (V, 5309, 5310), the merits of the bill to which it is applied not being within those limits (V, 5311-5315).

The motion to postpone indefinitely opens to debate all the merits of the proposition to which it is applied (V, 5316). It may not be applied to the motion to refer (V, 5317) or to suspend the rules (V, 5322), and it is reasonable to infer that it is equally inapplicable to the other secondary or privileged motions enumerated in the rule and to motions relating to the order of business.

There are in the rules of the House two motions to refer: The ordinary motion provided for in this rule, and the special motion provided by the rule for the previous question (Rule XVII, § 1; V, 5569). The motion to refer is sometimes made by using the words "to commit" or "to recommit"; but this change is one of form merely, and the three motions are practically the same (V, 5521).

§ 770. The motions to refer.

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§§ 771, 772.

The motion may not be used in direct form in Committee of the Whole (IV, 4721). It may be made after the engrossment and third reading of a bill, even though the previous question may not have been ordered (V, 5562, 5563).

The simple motion to refer is debatable within narrow limits (V, 5054), but the merits of the proposition which it is proposed to refer may not be brought into the debate (V, 5564-5568). The motion to refer with instructions is debatable (V, 5561).

The motion to refer may specify that the reference shall be to a select as well as a standing committee (IV, 4401), or to the Committee of the Whole (V, 5552-5553), and even that the committee be endowed with power to send for persons and papers (IV, 4402). The motion may be amended, as by adding instructions (V, 5521) on any germane subject (V, 6888), but it is not in order to propose as instructions anything that might not be proposed directly as an amendment (V, 5529-5541; 62d Cong., 1st sess., p. 1120), such as to eliminate an amendment adopted by the House (Speaker Clark, May 22, 1912), or strike out an amendment which has been adopted and insert something in its place (62d Cong., 3d sess., p. 2660), or to amend an adopted amendment (Oct. 25, 1921, p. 6776; Apr. 12, 1926, p. 7330). An amendment in the nature of a substitute is in order (Aug. 16, 1912, 62d Cong., 2d sess., p. 11090). It has been a practice, however, to permit a motion to recommit with instructions that the committee report "forthwith," in which case the chairman makes report at once without awaiting action by the committee (V, 5545-5547) and the bill is before the House for immediate consideration (V, 5550). When a bill is recommitted it is before the committee as a new subject (IV, 4557; V, 5558), but the committee must confine itself to the instructions, if there be any (IV, 4404; V, 5526). Where the House has recommitted a bill to a committee with instructions to report it back forthwith with certain amendments, the amendments must be adopted by the House after the report by the committee. (July 9, 1914, 63d Cong., 2d sess., p. 11903.)

The rule specifies that the motions to postpone and refer shall not be repeated on the same day at the same stage of the question (V, 5301, 5591). Under the practice, also, a motion to adjourn may be repeated only after intervening business (V, 5373), such as debate (V, 5374), the ordering of the yeas and nays (V, 5376, 5377), decision of the Chair on a question of order (V, 5378), or reception of a message (V, 5375). The motion to lay on the table may also be repeated after intervening business (V, 5398-5400); but the ordering of the previous question (V, 5709), a call of the House (V, 5401), or decision of a

§ 771. Instructions with the motion to refer.

§ 772. Repetition of motions.

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§§ 773-775.

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question of order have been held not to be such intervening business, it being essential that the pending matter be carried to a new stage in order to permit a repetition of the motion (V, 5709).

5. The hour at which the House adjourns shall be entered on the Journal.

§ 773. Entry of hour of adjournment on the Journal.

This rule was adopted in 1837, and amended in 1880 (V, 6740).

6. On the demand of any Member, before the question is put, a question shall be divided if it include propositions so distinct in substance that one being taken away a substantive proposition shall remain: Provided, That any motion or resolution to elect the members or any portion of the members of the standing committees of the House and the joint standing committees shall not be divisible.

§ 774. Division of the question.

This rule was first adopted in 1789, and was amended in 1837 (V, 6107). The proviso of the rule was adopted April 2, 1917.

After the question has been put it may not be divided (V, 6162), nor after the yeas and nays have been ordered (V, 6160, 6161). But it may be demanded after the previous question has been ordered (V, 5463, 6149). (Apr. 18, 1912, p. 5006.)

The principle that there must be at least two substantive propositions in

§ 775. Principles governing the division of the question.

order to justify division is insisted on rigidly (V, 6108-6113), as failure to do so produces difficulties (III, 1725). In passing on a demand for division the Chair considers only substantive propositions and not the merits of the question presented (V, 6122). It seems to be most proper, also, that the division should depend on grammatical structure rather than on the legislative propositions involved (I, 394; V, 6119). But decisions have been made that a resolution affecting two individuals may be divided, although such division may involve a reconstruction of the text (I, 623; V, 6119-6121). The better practice seems to be, however, that this reconstruction of the text should be made by the adoption of a substitute amendment of two branches, rather than by interpretation of the Chair (II, 1621). But merely formal words, such as "resolved," may be supplied by interpretation

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— §§ 776, 777.

of the Chair (V, 6114–6118). It is not in order to demand a division of a related subject, as, when a resolution to adopt a series of rules not made a part of the resolution was before the House, it was held not in order to demand a separate vote on each rule (V, 6159), but if a special rule contains substantive propositions, a separate vote can be had on each proposition. (Jan. 30, 1923, 67th Cong., 4th sess., p. 2734.) In voting on the engrossment or passage of a bill or joint resolution a separate vote on the various portions may not be demanded (V, 6144–6146), or on the preamble of a bill (V, 6147); but on a series of simple resolutions a division may be demanded (V, 6149). When a motion is made to lay several connected propositions on the table a division is not in order (V, 6138–6140). On a motion to commit with instructions it is not in order to demand a separate vote on the instructions or various branches thereof (V, 6134–6137). A proposition reported from the Committee of the Whole as an entire and distinct amendment may not be divided, but must be voted on in the House as a whole (IV, 4883–4892). On a decision of the Speaker involving two distinct questions, there may be a division on appeal (V, 6157).

7. A motion to strike out and insert is indivisible, but a motion to strike out being lost shall neither preclude amendment nor motion to strike out and

§ 776. Motion to strike out and insert not divisible.

insert; * * *

This rule was adopted in 1811, and amended in 1822 (V, 5767).

When it is proposed to strike out and insert not one but several connected matters, it is not in order to demand a separate vote on each of those matters (V, 6124, 6125), as when a substitute containing several resolutions is proposed; but after this substitute has been agreed to, it is in order to demand a division of the original resolution as amended (V, 6127, 6128). When, however, an amendment simply adding or inserting is proposed, it is in order to divide the amendment (V, 6129–6133).

7. * * * and no motion or proposition on a subject different from that under consideration shall be admitted under color

§ 777. Germane amendments.

of amendment.

This rule was adopted in 1789, and amended in 1822 (V, 5767, 5825).

It introduced a principle not then known to the general parliamentary law (V, 5825), but of high value in the procedure of the House (V, 5866). The principle of the rule applies to a proposition by which it is proposed to modify the pending bill, and not to a portion of the bill itself (V, 6929); and hence, in general, an amendment simply striking out words already in a bill may not be ruled out as not germane (V, 5805). While a committee may report a bill embracing different subjects, it is not in order during consideration

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§ 778.

Rule XVI.

in the House to introduce a new subject by way of amendment (V, 5825). Whether or not an amendment be germane should be judged from the provisions of its text rather than from the purposes which circumstances may suggest (V, 5783, 5803). The rule that amendments should be germane applies to amendments reported by committees (V, 5806).

Under the later practice an amendment should be germane to the particular paragraph or section to which it is offered (V, 5811-5820), and an amendment inserting an additional section should be germane to the portion of the bill to which it is offered (V, 5822). To a bill amending a general law on a specific point an amendment relating to the terms of the law rather than to those of the bill was offered and ruled not to be germane. (Speaker Reed, V, 5808; also ruled by Speaker Cannon, Apr. 1, 1910, 61st Cong., 1st sess., p. 4144; Speaker Clark, Dec. 5, 1912, 62d Cong., 3d sess.) So to a legislative section in a general appropriation bill amending one section of the criminal code, a provision amending the criminal code in other particulars was held not germane. (Speaker Clark, Jan. 16, 1917, 64th Cong., 2d sess., p. 1487.) A bill amending several sections of an act does not necessarily bring the entire act under consideration so as to permit an amendment to any portion of the act sought to be amended by the bill. (Chairman Anderson, June 10, 1921, p. 2415; Chairman Stafford, Dec. 10, 1921, p. 200.) An amendment germane to the bill as a whole, but hardly germane to any one section, may be offered at an appropriate place with notice of motions to strike out the following sections which it would supersede (V, 5823). In the consideration of Senate amendments to a House bill an amendment must be germane to the particular Senate amendment to which it is offered, it not being sufficient that it should be germane to provisions of the bill (V, 6188-6191).

In determining whether or not an amendment be germane, certain principles are established.

(a) One individual proposition may not be amended by another individual proposition even though the two belong to the same class. Thus, the following are not germane: To a bill proposing the admission of one Territory into the Union, an amendment for admission of another Territory (V, 5529); to a bill for the relief of one individual, an amendment proposing similar relief for another (V, 5826-5829); to a resolution providing a special order for one bill, an amendment to include another bill (V, 5834-5836); to a provision for extermination of the cotton-boll weevil, an amendment including the gypsy moth (V, 5832); to a provision for a clerk for one committee, an amendment for a clerk to another committee (V, 5833); to a bill prohibiting transportation of messages relative to dealing in cotton futures, an amendment adding wheat, corn, etc. (Speaker Clark, July 16, 1912, 62d Cong., 2d sess., p. 9142.) To a bill prohibiting importation of goods "made in whole or in part by convict, pauper, or detained labor, or made in whole or in part from materials which have been made in whole or in part or in any manner manipulated by convict or prison labor," an amendment prohibiting impor-

§ 778. One individual proposition not germane to another.

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§§ 779-781.

tation of goods made by child labor was held not germane on the ground that labor described in bill constituted a single class of labor. (Speaker Clark, Mar. 25, 1914, p. 5481, 2d sess. 63d Cong.)

(b) A specific subject may not be amended by a provision general in nature, even when of the class of the specific subject (§ 779. A general provision not germane to a specific subject. (V, 5843-5846). Thus, the following are not germane: To a bill for the admission of one Territory into the Union, an amendment providing for the admission of several other Territories (V, 5837); to a bill relating to all corporations engaged in interstate commerce, an amendment relating to all corporations (V, 5842); to a bill modifying an existing law as to one specific particular, an amendment relating to the terms of the law rather than those of the bill (V, 5806-5808); to a bill merely extending and reenacting an existing law, an amendment seeking to further amend the law (V, 5806) (contra, Chairman Burton, Oct. 18, 1921, p. 6465, and Chairman Graham, of Illinois, Apr. 28, 1924, p. 7419, 68th Cong., 1st sess.); to a bill amending the war-time prohibition act in one particular, an amendment repealing that act. (Chairman Good, July 14, 1919, p. 2555.)

(c) A general subject may be amended by specific propositions of the same class. Thus, the following have been held to be germane: To a bill admitting several Territories into the Union, an amendment adding another Territory (V, 5838); to a bill providing for the construction of buildings in each of two cities, an amendment providing for similar buildings in several other cities (V, 5840); to a resolution embodying two distinct phases of international relationship, an amendment embodying a third (V, 5839). But to a resolution authorizing a class of employees in the service of the House, an amendment providing for the employment of a specified individual was held not to be germane (V, 5848-5849).

(d) Two subjects are not necessarily germane because they are related.

Thus, the following have been held not to be germane: § 781. Subjects not necessarily germane because related. To a proposition relating to the terms of Senators, an amendment changing the manner of their election (V, 5882); to a bill relating to commerce between the

States, an amendment relating to commerce within the several States (V, 5841); to a proposition to relieve destitute citizens of the United States in Cuba, a proposition declaring a state of war in Cuba and proclaiming neutrality (V, 5897); to a proposition for the appointment of a select committee to investigate a certain subject, an amendment proposing an inquiry of the Executive on that subject (V, 5891); to a bill granting a right of way to a railroad, an amendment providing for the purchase of the railroad by the Government (V, 5887); to a provision for the erection of a build-

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ing for a mint, an amendment to change the coinage laws (V, 5884); to a resolution proposing expulsion, an amendment proposing censure (Oct. 27, 1921, 67th Cong., 1st sess.); to a general tariff bill, an amendment creating a tariff board (Chairman Garrett of Tennessee, May 6, 1913, 63d Cong., 1st sess., p. 1234; also Speaker Clark, May 8, 1913, 63d Cong., 1st sess., p. 1381; for ruling in full, see sec. 947); to a proposition to sell two battleships and build a new battleship with the proceeds, a proposition to devote the proceeds to building wagon roads. (Speaker Clark, June 23, 1914, p. 10962, 63d Cong., 2d sess.; see sec. 952.)

To a law providing for the insurance of soldiers upon the payment of premiums, a proposition for the continuance of such insurance for two years without the payment of premiums was held not germane. (Chairman Tilson, Sept. 13, 1919; see sec. 951.) To a proposition appropriating money for a general increase in the salaries of employees for 1918, a provision making the same increase available for the remainder of 1917 was held not germane (Chairman Harrison, of Mississippi, Dec. 19, 1916, 64th Cong., 2d sess., p. 559), as was also a proposition to establish a minimum wage among the employees affected by the bill (Chairman Harrison, Dec. 19, 1916, p. 571).

To a bill amending a general law in several particulars, an amendment providing for the repeal of the whole law was held germane (V, 5824), but the bill amending the law must so vitally affect the whole law as to bring the entire act under consideration before the Chair will hold an amendment repealing the law or amending any section of the law germane to the bill. (Speaker Gillett, June 19, 1919; see sec. 950; Chairman Madden, Apr. 2, 1924, p. 5437, 68th Cong., 1st sess.)

(e) An amendment which is germane, not being "on a subject different from that under consideration," belongs to a class illustrated by the following: To a bill providing for an interoceanic canal by one route, an amendment providing for a different route (V, 5909); to a bill providing for the reorganization of the Army, an amendment providing for the encouragement of marksmanship (V, 5910); to a proposition to create a board of inquiry, an amendment specifying when it shall report (V, 5915); to a bill relating to "oleomargarine and other imitation dairy products," an amendment on the subject of "renovated butter" (V, 5919); to a resolution rescinding an order for final adjournment, an amendment fixing a new date therefor (V, 5920).

§ 782. Illustrations
of germane
amendments.

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§§ 782A, 783.

A rule which was in force during the Sixty-second to Sixty-seventh Congresses, inclusive, had been interpreted to provide that no amendment to any item of a bill affecting revenue should be in order which did not directly relate to the item to which the amendment was proposed. Under this rule the following decisions arose:

To the portion of the Canadian reciprocity bill relating to articles on the dutiable list, an amendment placing certain articles on the free list is not germane; but to that portion of the bill relating to the free list, an amendment placing additional articles on the free list is germane. (Chairman Sherley, Apr. 21, 1911, pp. 541, 556.)

To a bill admitting certain articles free of duty, amendments admitting other articles free of duty, as well as an amendment providing that said articles should be admitted free only when imported from a country imposing no duty, are not germane. (Chairman Alexander, May 8, 1911, pp. 1092, 1110.) To a tariff bill, an amendment providing for a tariff commission is not germane. (Speaker Clark; see sec. 947.) To a bill to raise revenue by excise tax and bond issue, an amendment to raise revenue by protective tariff is not germane. (Speaker Clark, Feb. 1, 1917, 64th Cong., 2d sess., p. 2439.) To an item in a revenue bill fixing a duty, an amendment dealing with administrative provisions is not germane. (Chairman Anderson, 66th Cong., 3d sess., Dec. 22, 1920, p. 657.)

After the repeal of this rule the following decision was rendered:

To a bill raising revenue by several methods of taxation the Committee of the Whole, overruling the Chair, held that an amendment proposing a tax on undistributed profits was germane, but sustained a decision holding a tax on campaign contributions not germane. (Feb. 21, 1924, 68th Cong., 1st sess., pp. 2910-2916, p. 2925.)

8. Pending a motion to suspend the rules, the

§ 783. Dilatory motions pending motion to suspend rules.

Speaker may entertain one motion that the House adjourn; but after the result thereon is announced he shall not entertain any other motion till the vote is taken on suspension.

This rule was adopted in 1868 (V, 5743), and amended in 1911. A motion for a recess (V, 5748-5751) and for a call of the House when there was no doubt of the presence of a quorum (V, 5747) were held to be dilatory motions within the meaning of the rule. But where a motion to suspend the rules has been made and, after one motion to adjourn has been acted on, a quorum has failed, another motion to adjourn has been admitted (V, 5744-5746).

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§§ 784, 785.

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9. At any time after the reading of the Journal it shall be in order, by direction of the appropriate committees, to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the purpose of considering bills raising revenue, or general appropriation bills.

§ 784. Privileged motion for consideration of revenue and appropriation bills.

As early as 1835 the necessity of giving the appropriation bills precedence became apparent, and in 1837 a rule was adopted which established the principle which continues in the present rule (IV, 3072).

The motion to consider revenue bills and the motion to consider appropriation bills are of equal privilege (IV, 3075, 3076). The motion may designate the particular bill to be considered (IV, 3074). It is in order on Fridays (IV, 3081) and has precedence of the motion to go into Committee of the Whole House to consider the Private Calendar (IV, 3082-3085). Before the adoption of clause 3 of Rule XIII it could be made on a "suspension day" as on other days (IV, 3080). On Wednesdays the privilege of the motion is limited by Rule XXIV, clause 7. It may not be amended or debated and the previous question may not be demanded on it (IV, 3077-3079). Although highly privileged, it may not take precedence of a motion to reconsider (IV, 3087). The motion is less highly privileged than motion to discharge committee from further consideration of a bill under clause 4 of Rule XXVII on suspension days. (Jan. 16, 1911, 61st Cong., 3d sess., pp. 965-976.)

§ 785. Dilatory motions.

10. No dilatory motion shall be entertained by the Speaker.

This rule was adopted in 1890 (V, 5706) to make permanent a principle already enunciated in a ruling of the Speaker, who had declared that the "object of a parliamentary body is action, not stoppage of action" (V, 5713).

The Speaker has declined to entertain debate or appeal on a question as to the dilatoriness of a motion, as to do so would be to nullify the rule (V, 5731); but has recognized that the authority conferred by the rule should not be exercised until the object of the dilatory motion "becomes apparent to the House" (V, 5713-5714). Usually, but not always, the Speaker awaits a point of order from the floor before acting (V, 5715-5722). The rule has been applied to the motions to adjourn (V, 5721), to reconsider (V, 5735), to fix the time of five-minute debate in Committee of the Whole (V, 5734), and the question of consideration (V, 5731-5733), to lay on the table (Speaker

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§§ 786, 787.

Clark, Apr. 12, 1916, 64th Cong., 1st sess, p. 5998). The point of "no quorum" has also been ruled out (V, 5724-5730). A demand for tellers has been held dilatory (V, 5735, 5736); but the constitutional right of the Member to demand the yeas and nays may not be overruled (V, 5737). (For ruling by Speaker Gillett construing dilatory motion, see Congressional Record, July 24, 1919, p. 3114.)

RULE XVII.

PREVIOUS QUESTION.

1. There shall be a motion for the previous question, which, being ordered by a majority of Members voting, if a quorum be present, shall have the effect to cut off

§ 786. The previous question.

all debate and bring the House to a direct vote upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill to its passage or rejection. It shall be in order, pending the motion for, or after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a standing or select committee.

The House adopted a rule for the previous question in 1789, but it was not turned into an instrument for closing debate until 1811. At various times it has been perfected by amendments shown by experience to be necessary (V, 5443-5445).

The previous question is the only motion used for closing debate in the House itself (V, 5456). It is not in order in Committee of the Whole (IV, 4716). The motion may not include a provision that it shall take effect at a certain time (V, 5457). Forty minutes of debate are allowed whenever the previous question is ordered on a proposition on which there

§ 787. Effect of previous question on debate.

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§§ 788, 789.

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has been no debate (V, 6821; see Rule XXVII, § 3); but if there has been debate, even though brief, before the ordering of the previous question, the forty minutes are not allowed (V, 5499-5501). This preliminary debate should be on the merits of the question if the forty minutes of debate are to be denied for reason of it (V, 5502). The forty minutes should be demanded before division has begun on the main question (V, 5496). It may not be demanded on incidental motions, but is confined to the main question (V, 5497, 5498). It may not be demanded on a proposition which has been debated in Committee of the Whole (V, 5505), or on a conference report if the subject matter of the report was debated before being sent to conference (V, 5506, 5507). When the previous question is ordered merely on an amendment which has not been debated, the forty minutes are allowed (V, 5503); but the same liberty of debate is not allowed when the question covers both an undebated amendment and the original proposition (V, 5504). It was also denied on a resolution to correct an error in an enrolled bill (V, 5508). The forty minutes is divided, one half to those favoring and the other half to those opposing (V, 5495).

The provisions of the rule define the application of the previous question with considerable accuracy. It may not be moved on more than one bill except by the unanimous consent of the House (V, 5461-5464), or on motions to agree to a conference report and also to dispose of differences not included in the report (V, 5465). It may apply to the main question and a pending motion to refer (V, 5466; Speaker Clark, May 17, 1911). 62d Cong., 1st sess., p. 1294). When a bill is reported from the Committee of the Whole with the enacting words stricken out, it may be applied to the motion to concur without covering further action on the bill (V, 5342). During consideration "in the House as in Committee of the Whole" it may be demanded while Members still desire to offer amendments (IV, 4926-4929), but it may not be moved on a single section of a bill (IV, 4930). When ordered on a resolution with a preamble there is doubt of its application to the preamble, unless the motion specifies (V, 5469, 5470). It may be moved on a series of resolutions, but this does not preclude a division of the resolutions on the vote (V, 5468). It is often ordered on undebatable propositions to prevent amendment (V, 5473, 5490), but may not be moved on a motion that is both undebatable and unamendable (IV, 3077). It applies to questions of privilege as to other questions (II, 1256; V, 5459, 5460; Speaker Clark, Dec. 9, 1913, 63d Cong., 2d sess., p. 585).

The Member in charge of the bill and having the floor may demand the previous question although another Member may propose a motion of higher privilege; but the motion of higher privilege must be put first (V, 5480); and if the Member in charge of the bill claims the floor in debate another Member may not demand the previous question (II, 1458); but

§ 788. Application of the previous question.

§ 789. The right to move the previous question.

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having the floor any Member may make the motion although the effect may be to deprive the Member in charge of the bill (V, 5476). And if, after debate, the Member in charge of the bill does not move the previous question, another Member may (V, 5475); but where a Member intervenes on a pending proceeding to make a preferential motion, as the motion to recede from a disagreement with the Senate, he may not move the previous question on that motion as against the rights of the Member in charge (II, 1459).

The motion to commit under this rule applies to resolutions of the House alone as well as to bills (V, 5572, 5573), to Senate amendments to a House bill (V, 5575), and to a motion to amend the Journal (V, 5574). It does not apply to a report from the Committee on Rules (V, 5593-5601), or to a pending amendment to a proposition in the House (V, 5573).

§ 790. The motion to commit after the previous question is ordered.

The motion to commit may be made pending the demand for the previous question on the passage, whether a bill or resolution be under consideration (V, 5576); but when the demand covers all stages of the bill to the final passage the motion to commit is made only after the third reading, and is not in order pending the demand or before the engrossment or third reading (V, 5578-5581). When separate motions for the previous question are made, respectively, on the third reading and on the passage of a bill, the motion to commit should be made only after the previous question is ordered on the passage (V, 5577). When the previous question has been ordered on a simple resolution (as distinguished from a joint resolution) and a pending amendment, the motion to commit should be made after the vote on the amendment (V, 5585-5588). A motion to commit has been entertained after ordering of the previous question even before the adoption of rules at the beginning of a Congress. (Speaker Clark, Apr. 7, 1913, p. 77.) It was formerly held that the opponents of a bill had no claim to prior recognition to make the motion (II, 1456), but under Rule XVI, § 4, the prior right to recognition is given to an opponent. The right to move to recommit a House bill with a Senate amendment belongs to a Member who is opposed to the whole bill in preference to a Member who is merely opposed to the Senate amendment. (Speaker Clark, Apr. 25, 1916, 64th Cong., 1st sess., p. 6821.) When the House refuses to order a bill to be engrossed and read a third time the motion to commit may not be made (V, 5602, 5603).

The motion to refer under this rule is not debatable (V, 5582); but may be amended, as by adding instructions, unless such amendment be precluded by moving the previous question (V, 5582-5584). Unless the previous question is ordered, an amendment in the nature of a substitute is in order on a motion to commit with instructions (Speaker Clark, Aug. 16, 1912, 62d Cong., 2d sess., p. 11090), but the amendment should be germane to the instructions (V, 6888).

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It is not in order to do indirectly by a motion to commit with instructions what may not be done directly by way of amendment such as to propose an amendment that is not germane (V, 5529-5541, 5834, 5889; Speaker Clark, Dec. 5, 1912, p. 173); to propose to strike out or amend what has already been inserted by way of amendment (V, 5531; Speaker Clark, May 22, 1912; also Feb. 6, 1913, 62d Cong., 3d sess., p. 2660; also Speaker Gillett, June 28, 1922, p. 9639; Aug. 23, 1922, 67th Cong., 2d sess.); to propose an amendment in violation of clause 2 of Rule XXI (V, 5533-5540); or to grant a committee leave to report at any time (V, 5543).

The motion may not be accompanied by a preamble (V, 5589), nor argument or explanation (Speaker Gillett, Nov. 29, 1922); and it may not be laid on the table (V, 5412-5414). Only one motion to commit is in order (V, 5577, 5582, 5585); but where a bill is recommitted under this motion, and, having been reported again, is again subjected to the previous question, another motion to commit is in order after the engrossment and third reading (V, 5591). And where one motion to recommit was ruled out of order, the Speaker entertained a proper motion to recommit. (Speaker Clark, May 8, 1913, 63d Cong., 1st sess., p. 1384.)

When a special order declares that at a certain time the previous question shall be considered as ordered on a bill to the final passage, it has usually, but not always, been held that a motion to commit is precluded (IV, 3207-3209), but under clause 56, Rule XI, the Committee on Rule is prohibited from reporting such a special order (sec. 725).

The motion to lay on the table may not be applied to the previous question (V, 5410, 5411); nor may it be applied to the main question after the previous question has been ordered (V, 5415-5422), or after the yeas and nays have been ordered on the demand for the previous question (V, 5408, 5409).

The motion to postpone may not be applied to the main question after the previous question has been ordered (V, 5319-5321). The previous question may be applied both to the main question and a pending motion to refer (V, 5342).

2. A call of the House shall not be in order after the previous question is ordered, unless it shall appear upon an actual count by the Speaker that a quorum is not present.

§ 792. Relation of previous question to failure of a quorum.

This rule was adopted in 1860 (V, 5447).

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Rule XVIII.

§§ 793, 794.

3. All incidental questions of order arising after a motion is made for the previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate.

§ 793. Questions of order pending the motion for the previous question

This rule was adopted in 1837 to prevent delay by debate on points of order after the demand for the previous question (V, 5448). Under the present practice, since debate on points of order is entirely within the control of the Chair, he may recognize and respond to a parliamentary inquiry although the previous question may have been demanded. (Speaker pro tem Snell, Mar. 27, 1926, 69th Cong., 1st sess., p. 6469.)

A question of privilege relating to the integrity of action of the House itself has been distinguished from ordinary questions of order and has been thrown open to debate after the ordering of the previous question (V, 2532).

RULE XVIII.

RECONSIDERATION.

1. When a motion has been made and carried or lost, it shall be in order for any member of the majority, on the same or succeeding day, to move for the reconsideration thereof, and such motion shall take precedence of all other questions except the consideration of a conference report or a motion to adjourn, and shall not be withdrawn after the said succeeding day without the consent of the House, and thereafter any Member may call it up for consideration: *Provided*, That such motion, if made during the last six days of a session, shall be disposed of when made.

§ 794. The motion to reconsider.

The motion to reconsider, used in the Continental Congress and in the House of Representatives from its first organization, in 1789, was first made the subject of a rule in 1802; and at various times this rule has been perfected by amendments (V, 5605).

The motion is not used in Committee of the Whole (IV, 4716-4718), or in the House during the absence of a quorum when the vote proposed to be reconsidered requires a quorum (V, 5606). But on votes incident to a call

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of the House the motion to reconsider may be entertained and also laid on the table, although a quorum may not be present (V, 5607, 5608).

The mover of a proposition is entitled to prior recognition to move to reconsider (II, 1454). A Member may make the motion at any time without thereby abandoning a prior motion made by himself and pending (V, 5610). A Delegate may not make the motion (II, 1292). The provision of the rule that the motion may be made "by any member of the majority" is construed, in case of a tie vote, to mean any member of the prevailing side (V, 5615, 5616), and the same construction applies in case of a two-thirds vote (II, 1656; V, 5617, 5618). Where the yeas and nays have not been ordered recorded in the Journal, any Member, irrespective of whether he voted with the majority or not, may make the motion to reconsider (V, 5611-5613, 5689); but a Member who was absent (V, 5619), or who was paired in favor of the majority contention and did not vote, may not make the motion (V, 5614).

The precedence given the motion by the rule permits it to be made even after the previous question has been demanded (V, 5656) or while it is operating (V, 5657-5662). The motion to reconsider the vote on the engrossment of a bill may be admitted after the previous question has been moved on a motion to postpone (V, 5663), and a motion to reconsider the vote on the third reading may be made and acted on after a motion for the previous question on the passage has been made (V, 5656). It also takes precedence of the motion to go into Committee of the Whole, or even of a demand that the House return to committee after the appearance of a quorum (IV, 3087). But in a case wherein the House had passed a bill and disposed of a motion to reconsider the vote on its passage, it was held to be too late to reconsider the vote sustaining the decision of the Chair which brought the bill before the House (V, 5652). After a conference has been agreed to and the managers for the House appointed, it is too late to move to reconsider the vote whereby the House acted on the amendments in disagreement (V, 5664). While the motion has high privilege for entry, it may not be considered while another question is before the House (V, 5673-5676). When it relates to a bill belonging to a particular class of business, consideration of the motion is in order only when that class of business is in order (V, 5677-5681). It may then be called up at any time; but is not the regular order until called up (V, 5682). When once entered it may remain pending indefinitely, even until a succeeding session of the same Congress (V, 5684). The motion to reconsider an action taken on a bill on Tuesday may be entered but may not be considered on Calendar Wednesday. (Speaker Gillett, May 4, 1921; 67th Cong., 1st sess., p. 1032.)

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Rule XVIII.

§§ 797, 798.

A motion to reconsider may be entertained, although the bill or resolution to which it applies may have gone to the other House or the President (V, 5666-5668). The fact that the House had informed the Senate that it had agreed to a Senate amendment to a House bill was held not to prevent a motion to reconsider the vote on agreeing (V, 5672). When a motion is made to reconsider a vote on a bill which has gone to the Senate, a motion to recall the bill is privileged (V, 5669-5671). The motion to reconsider may be applied once only to a vote ordering the previous question (V, 5655), and may not be applied to a vote ordering the previous question which has been partially executed (V, 5653, 5654); but a vote agreeing to an order of the House has been reconsidered, although the execution of the order had begun (III, 2028; V, 5665).

The motion may not be applied to negative votes on motions to adjourn (V, 5620-5622), or for a recess (V, 5625), or to go into Committee of the Whole (V, 5368). In one instance, however, the Chair admitted a motion to reconsider an affirmative vote on the motion to go into Committee of the Whole (V, 5368). Motions to reconsider negative votes on motions to fix the day to which the House shall adjourn have been the subjects of conflicting rulings (V, 5623, 5624). It is in order to reconsider a vote postponing a bill to a day certain (V, 5643); but not to reconsider a negative decision of the question of consideration (V, 5626, 5627), or a vote on suspension of the rules (V, 5645, 5646), or a vote on reconsideration of a bill returned with the objections of the President. (Ruling by Speaker Clark, Feb. 19, 1913, Record, p. 3430, 62d Cong., 3d sess.) A vote whereby a second is ordered may be reconsidered (V, 5642). The motion to reconsider a vote on a proposition having been once agreed to, and the said vote having again been taken, a second motion to reconsider may not be made unless the nature of the proposition has been changed by amendments (V, 5685-5688).^{*} (Mar. 1, 1919, p. 4807.)

A bill is not considered passed or an amendment agreed to if a motion to reconsider is pending, the effect of the motion being to suspend the original proposition (V, 5704); and the Speaker declines to sign an enrolled bill until a pending motion to reconsider has been disposed of (V, 5705). But when the Congress expires leaving unacted on a motion to reconsider the vote whereby a simple resolution of the House has been agreed to, it is probable that the resolution would be operative; and where a bill has been enrolled, signed by the Speaker, and approved by the President, it is undoubtedly a law, although a motion to reconsider may not have been disposed of (V, 5704, footnote). A Member-elect may not take the oath until a motion to recon-

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§§ 799-802.

Rule XVIII.

consider the vote determining his title is disposed of (I, 335); but when, in such a case, the motion is disposed of, the right to be sworn is complete (I, 622). When the motion to reconsider is decided in the affirmative the question immediately recurs on the question reconsidered (V, 5703). When a vote whereby an amendment has been agreed to is reconsidered the amendment becomes simply a pending amendment (V, 5704). When the vote ordering the previous question is reconsidered it is in order to withdraw the motion for the previous question, the "decision" having been nullified (V, 5357). When the previous question has been ordered on a series of motions and its force has not been exhausted the reconsideration of the vote on one of the motions does not throw it open to debate (V, 5493); but when a vote on a single proposition taken under the operation of the previous question is reconsidered the main question stands divested of the previous question and may be debated (V, 5491, 5492).

The motion to reconsider is agreed to by majority vote, even when the vote reconsidered requires two-thirds for affirmative action (II, 1656; V, 5617, 5618), or when only one-fifth is required for affirmative action, as in votes ordering the yeas and nays (V, 5689-5692, 6029). But one motion to reconsider the yeas and nays having been acted on, another motion to reconsider is not in order (V, 6037).

A vote on the motion to lay on the table may be reconsidered whether the decision be in the affirmative (V, 5628, 5695, 6288) or in the negative (V, 5629). It is in order to reconsider the vote laying an appeal on the table (V, 5630), although during proceedings under a call of the House this motion was once ruled out (V, 5631). The motion to reconsider may not be applied to the vote whereby the House has laid another motion to reconsider on the table (V, 5632-5640).

A motion to reconsider is not debatable if the motion proposed to be reconsidered was not debatable (V, 5694-5699); and the latest ruling is that the application of the previous question makes an undebatable proposition (V, 5700, 5701).

2. No bill, petition, memorial, or resolution referred to a committee, or reported therefrom for printing and recommitment, shall be brought back into the House on a motion to reconsider; * * *

§ 802. Application of motion to reconsider to bills in committees.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XIX.

§§ 803, 804.

This rule was first adopted in 1860, and amended in 1872, to prevent a practice of using the privilege of the motion to reconsider to secure consideration of bills otherwise not in order (V, 5647). There is a question as to whether or not the rule applies to a case wherein the House, after considering a bill, recommits it (V, 5648-5650). After a committee has reported a bill it is too late to reconsider the vote by which it was referred (V, 5651).

§ 803. Requirement that reports of committees be in writing and be printed.

2. * * * and all bills, petitions, memorials, or resolutions reported from a committee shall be accompanied by reports in writing, which shall be printed.

This rule was adopted in 1880 (V, 5647).

The House insists on observance of this rule (IV, 4655) and does not receive verbal reports as to bills (IV, 4654). But the sufficiency of a report is passed on by the House and not by the Speaker (II, 1339; IV, 4653). A report is not necessarily signed by all those concurring (II, 1274) or even by any of those concurring, but minority views are signed by those submitting them (IV, 4671). The requirement that reports shall be printed does not mean that the report must be printed before the matter reported is called up for consideration, and the fact that a report was not printed as originally made to the House does not prevent the consideration of the matter reported. (Speaker Gillett, Dec. 15, 1922, 67th Cong., 4th sess., p. 532.)

RULE XIX.

OF AMENDMENTS.

When a motion or proposition is under consideration a motion to amend and a motion to amend that amendment shall be in order, and it shall also be in order to offer a further amendment by way of substitute, to which one amendment may be offered, but which shall not be voted on until the original matter is perfected, but either may be withdrawn before amendment or decision is had thereon. Amendments to the title of a bill or resolution shall not be in order until after its passage, and shall be decided without debate.

§ 804. Amendments to text and to title.

This rule was adopted in 1880, with an amendment adding the portion in relation to the title in 1893. The rule of 1880, however, merely stated in form of rule what had been the practice of the House for many years (V, 5753).

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§§ 805-807.

Rule XIX.

It is not in order to offer more than one motion to amend of the same nature at a time (V, 5755), and two independent amendments may be voted on at once only by unanimous consent of the House (V, 5779). But the four motions specified by the rule may be pending at one and the same time (V, 5753). An amendment in the third degree is not specified by the rule and is not permissible (V, 5754), even when the third degree is in the nature of a substitute for an amendment to a substitute (V, 5791; Chairman Chindblom, Apr. 12, 1926, p. 7238). But a substitute amendment may be amended by striking out all after its first word and inserting a new text (V, 5793, 5794), as this, while in effect a substitute, is not technically so, for the substitute always proposes to strike out all after the enacting or resolving words in order to insert a new text (V, 5785, footnote). An amendment in the nature of a substitute may be proposed before amendments to the original text have been acted on, but may not be voted on until such amendments have been disposed of (V, 5753, 5787). When a bill is considered by sections or paragraphs an amendment in the nature of a substitute is properly offered after the reading for amendment is concluded (V, 5788). But when it is proposed to offer a single substitute for several paragraphs of a bill which is being considered by paragraphs, the substitute may be moved to the first paragraph, with notice that, if agreed to, motions will be made to strike out the remaining paragraphs (V, 5795). The substitute amendment, as well as the original proposition, may be perfected by amendments before the vote on it is taken (V, 5786). An amendment in the nature of a substitute having been agreed to the vote is then taken on the original proposition as amended (II, 983; V, 5799, 5800). Contrary to the provisions of the rule, the later practice has permitted an amendment in the nature of a substitute for the original amendment (Oct. 17, 1921, p. 6400).

While the rule provides that either an ordinary or substitute amendment may be withdrawn in the House (V, 5753) or "in the House as in Committee of the Whole" (IV, 4935), it may not be withdrawn in Committee of the Whole (V, 5221).

The motion to refer, the previous question not being ordered, has precedence of the motion to amend (V, 5555). Amendments reported by a committee are acted on before those offered from the floor (V, 5773); but there is a question as to the extent to which the chairman of the committee reporting a bill should be recognized to offer amendments to perfect it in preference to other Members (II, 1450). The motion to strike out the enacting clause has precedence of the motion to amend, and may be offered while an amendment is pending (V, 5328-5331).

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Rule XX.

§§ 808-810.

With some exceptions an amendment may attach itself to secondary and § 808. Relation of privileged motions (V, 5754). Thus, the motions to the motion to postpone, refer, amend, for a recess, and to fix the day amend to other motions to which the House shall adjourn may be amended (V, 5754). But the motions for the previous question, to lay on the table, to adjourn (V, 5754) and to go into Committee of the Whole to consider a privileged bill may not be amended (IV, 3078, 3079).

RULE XX.

OF AMENDMENTS OF THE SENATE.

1. Any amendment of the Senate to any House bill shall be subject to the point of order § 809. Consideration of Senate amendments in Committee of the Whole. that it shall first be considered in the Committee of the Whole House on the state of the Union if, originating in the House, it would be subject to that point.

This rule was adopted in 1880 to prevent a practice by which Senate amendments of the class described had escaped consideration in Committee of the Whole (IV, 4796).

A Senate amendment which is a modification merely of a House proposition, like the increase or decrease of the amount of an appropriation, and does not involve new and distinct expenditure, is not required to be considered in Committee of the Whole (IV, 4797-4806). When in the House an amendment is offered to provide an appropriation for another purpose than that of the Senate amendment, the House goes into Committee of the Whole to consider it (IV, 4795). When an amendment is referred, the entire bill goes to the Committee of the Whole (IV, 4808), but the committee considers only the Senate amendment (V, 6192). It usually considers all the amendments, although they may not all be within the rule requiring such consideration (V, 6195). The House may, however, proceed to the disposition of those Senate amendments not requiring consideration in Committee of the Whole before going into committee on those affected by the rule (IV, 4807). In Committee of the Whole a Senate amendment, even though it be very long, is considered as an entirety and not by paragraphs or sections (V, 6194). It has been held that each amendment is subject to general debate and amendment under the five-minute rule (V, 6193, 6196).

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§§ 810A, 811.

Rule XXI.

2. No amendment of the Senate to a general appropriation bill which would be in violation of the provisions of clause 2 of Rule XXI, if said amendment had originated in the House, nor any amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment.

This clause of the rule was adopted in 1920.

While the rule provides for a motion authorizing the managers on the part of the House to agree upon amendments of the Senate in violation of clause 2 of Rule XXI, in practice after a conference the managers report that they have not agreed upon certain amendments, and after the partial conference report is disposed of the remaining amendments are taken up in order and disposed of directly by the House without further conference.

In the event appropriation bill with Senate amendments in violation of clause 2 of Rule XXI is sent to conference by unanimous consent, such procedure does not thereby prevent a point of order being sustained against the conference report should the managers on the part of the House violate the provisions of clause 2 of Rule XX. (Speaker Gillett, Jan. 22, 1921, 66th Cong., 3d sess., p. 1910.) The rule is a restriction upon the managers on the part of the House only, and does not provide for a point of order against a Senate amendment when it comes up for action by the House. (Speaker Gillett, Feb. 15, 1921, 66th Cong., 3d sess., p. 3415.) Managers may be authorized to agree to an appropriation by a resolution reported from the Committee on Rules (Oct. 27, 1921, p. 6897).

RULE XXI.

ON BILLS.

1. Bills and joint resolutions on their passage shall be read the first time by title and the second time in full, when, if the previous question is ordered, the Speaker shall state the question to be: Shall the bill be engrossed

§ 811. Reading, engrossment, and passage of bills.

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Rule XXI.

§§ 812, 813.

and read a third time? and, if decided in the affirmative, it shall be read the third time by title, unless the reading in full is demanded by a Member, and the question shall then be put upon its passage.

This rule was first adopted in 1789, and was amended in 1794 and 1880 (IV, 3391).

Formerly a bill was read for the first time by title at the time of its introduction, but since 1890 all bills have been introduced by filing them with the Clerk, thus rendering a reading by title impossible at that time (IV, 3391). But the titles of all bills introduced are printed in the Journal and Record, thus carrying out the real purposes of the rule. The second reading formerly occurred in the House before commitment; but as the processes of handling bills have been shortened, the second reading now occurs for bills considered in the House alone when they are taken up for action, and, for bills considered in Committee of the Whole, when they are taken up in that committee. A bill read in full in Committee of the Whole and reported therefrom is not read in full again when acted on by the House (IV, 3409, 3410, 4916). But when a bill is taken up in Committee of the Whole its reading in full may be demanded before general debate begins, although it may have just been read in the House (IV, 4738). The Speaker makes it his duty, ordinarily, to object to a request for unanimous consent that a bill may be acted on without being read (IV, 3390).

The right to demand the full reading of the engrossed copy of a bill, guaranteed by the rule, exists only immediately after it has passed to be engrossed and before it has been read a third time by title (IV, 3400, 3403, 3404), or before the yeas and nays have been ordered on the passage (IV, 3402).

§ 813. The third reading after engrossment.

This right to demand the reading in full may cause the bill to be laid aside until engrossed, even though the previous question may be ordered (IV, 3395-3399). A special order does not deprive the Member of his right to demand the reading of the engrossed bill (IV, 3401), and a privileged motion may not intervene before the third reading (IV, 3405). A vote on the passage has been reconsidered in order to remedy the omission to read a bill a third time (IV, 3406). Senate bills are not engrossed in the House; but are ordered to a third reading.

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§§ 814, 815.

Rule XXI.

A bill in the House (as distinguished from the Committee of the Whole) is amended pending the engrossment and third reading (V, 5781). The question on engrossment and third reading being decided in the negative the bill is rejected (IV, 3420, 3421). A bill must be considered and voted on by itself (IV, 3408). Where the two Houses pass similar but distinct bills on the same subject it is necessary that one or the other House act again on the subject (IV, 3386). The requirement of a two-thirds vote for proposed constitutional amendments has been construed in the later practice to apply only to the vote on the final passage (V, 7029, 7030). A bill having been rejected by the House, a similar but not identical bill on the same subject was afterwards held to be in order (IV, 3384).

2. No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill: *Provided*, That it shall be in order further to amend such bill upon the report of the committee or any joint commission authorized by law or the House Members of any such commission having jurisdiction of the subject matter of such amendment, which amendment

§ 815. Unauthorized appropriations and legislation on general appropriation bills.

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Rule XXI.

§§ 816, 817.

being germane to the subject matter of the bill shall retrench expenditures.

The rule was first adopted in 1837, to prevent delay of appropriation bills because of contention over propositions of legislation. It has been amended at various times, especially the second sentence in the rule, permitting legislation tending to reduce expenditures, known as the "Holman Rule." Substantially the present form of the retrenchment rule was adopted in 1876, and employed from 1876 to 1885. The present form was adopted in the Fifty-second Congress and continued throughout the Fifty-third Congress. The "Holman Rule" was dropped during the Fifty-fourth to Sixty-first Congresses (1895-1911), and readopted in the Sixty-second and subsequent Congresses (IV, 3578).

As all bills making or authorizing appropriations require consideration in Committee of the Whole, it follows that the enforcement of the rule must ordinarily occur during consideration in Committee of the Whole, where the Chair, on the raising of a point of order, may rule out any portion of the bill in conflict with the rule (IV, 3811). No report of parts of the bill thus ruled out is made to the House. It is the practice, therefore, for some Member to reserve points of order when a general appropriation bill is referred to Committee of the Whole, in order that portions in violation of rule may be eliminated in the committee (V, 6921-6925; Chairman Chindblom, Feb. 6, 1926, 69th Cong., 1st sess., p. 3456). Points of order against unauthorized appropriations or legislation on general appropriation bills may be made as to the whole or a portion only of a paragraph (IV, 3652; V, 6881), and the fact that a point is made against a portion of a paragraph does not prevent another point against the whole paragraph (V, 6882). And if a portion of a proposed amendment be out of order, it is sufficient for the rejection of the whole amendment (V, 6878-6880); and where a point is made against the whole of a paragraph the whole must go out, but it is otherwise when the point is made only against a portion (V, 6884, 6885). In the administration of the rule it is the practice that those upholding an item of appropriation should have the burden of showing the law authorizing it (IV, 3597).

The authorization by existing law required in the rule to justify appropriations may be made also by a treaty if it has been ratified by both the contracting parties (IV, 3587). And a resolution of the House has been held sufficient authorization for an appropriation for the salary of an employee of the House (IV, 3656-3658) even though the resolution may have been agreed to only by a preceding House (IV, 3660). The omission to appropriate during a series of years for an object authorized by law does not

§ 816. Points of order on general appropriation bills.

§ 817. Authorization of law for appropriations.

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§ 817A, 818.

Rule XXI.

repeal the law, and consequently an appropriation when proposed is not subject to the point of order (IV, 3595). The law authorizing each head of a department to employ such numbers of clerks, messengers, copyists, watchmen, laborers, and other employees as may be appropriated for by Congress from year to year is held to authorize appropriations for those positions not otherwise authorized by law (IV, 3669, 3675, 4739); but this law does not apply to offices not within departments or not at the seat of government (IV, 3670-3674). By a general provision of law appropriations for investigations and the acquirement and diffusion of information by the Agricultural Department on subjects related to agriculture are generally in order in the agricultural appropriation bill (IV, 3649). It has once been held that this law would authorize also appropriations for the instrumentalities of such investigations (IV, 3615); but these would not include the organization of a bureau to conduct the work (IV, 3651). The law does not either authorize general investigations by the department (IV, 3652), or cooperation with state investigations (IV, 3650), or the investigation of foods in relation to commerce (IV, 3647, 3648), or the compiling of tests at an exposition (IV, 3653). An appropriation to carry out the purposes of a bill which had been "pocket vetoed" by the President at the close of a first session of Congress was held to be authorized by law. (Chairman Green, of Iowa, Feb. 26, 1927, 69th Cong., 2d sess., p. 4937).

The reappropriation of an unexpended balance for an object authorized by law may be made on an appropriation bill (IV, 3591, 3592; Chairman Hay, 63d Cong., 3d sess., p. 2750; Speaker Gillett, 67th Cong., 2d sess., p. 372), but it is not in order to provide for a revolving fund (Chairman Graham of Illinois, 67th Cong., 2d sess., p. 2684). The return of an unexpended balance to the Treasury is in order (IV, 3594.)

Judgments of courts certified to Congress in accordance with law or authorized by treaty (IV, 3634, 3635, 3644) and auditing under authority of law have been held to be authorization for appropriations for the payment of claims (IV, 3634, 3635). But unadjudicated claims (IV, 3628), even though ascertained and transmitted by an executive officer (IV, 3625-3640), and findings filed under the Bowman Act do not constitute authorization (IV, 3643).

An appropriation for an object not otherwise authorized does not make authorization to justify a continuance of the appropriation another year (IV, 3588, 3589), and the mere appropriation for a salary does not create an office so as to justify appropriations in succeeding years (IV, 3590, 3672, 3697), it being a general rule that propositions to appropriate for salaries not established by law or to increase salaries fixed by law are out of order (IV, 3664-3667, 3676-3679). But an exception to these general principles

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Rule XXI.

§§ 819, 820.

is found in the established practice that in the absence of a general law fixing a salary the amount appropriated in the last appropriation bill has been held to be the legal salary (IV, 3687-3696). A law having established an office and fixed a salary, it is not in order to provide for an unauthorized office and salary in lieu of it (IV, 3680).

An appropriation for a public work in excess of a fixed limit of cost (IV, 3583, 3584), or for extending a service beyond the limits assigned by an executive officer exercising a lawful discretion (IV, 3598), or by actual law (IV, 3582, 3585), or for purposes prohibited by law are out of order (IV, 3580, 3581, 3702). But the mere appropriation of a sum "to complete" a work does not fix a limit of cost such as would exclude future appropriations (IV, 3761). A declaration of policy in an act followed by specific provisions conferring authority upon a governmental agency to perform certain functions is not construed to authorize appropriations for purposes germane to the policy but not specifically authorized by the act. (Chairman James T. Begg, Jan. 12, 1927, 69th Cong., 2d sess., p. 1533.)

The rule requiring appropriations to be authorized by existing law excepts those "in continuance of appropriations for such public works and objects as are already in progress" (IV, 3578). But an appropriation in violation of existing law or to extend a service beyond a fixed limit (IV, 3585) is not in order as the continuance of a public work (IV, 3702-3724). Interruption of a work does not necessarily remove it from the privileges of the rule (IV, 3705-3708); but the continuation of the work must not be so conditioned in relation to place as to become a new work (IV, 3704). It has been held that a work has not been begun within the meaning of the rule when an appropriation has been made for a site for a public building (IV, 3785), or when a commission has been created to select a site or when a site has actually been selected for a work (IV, 3762-3763), or when a survey has been made (IV, 3782-3784). By "public works and objects already in progress" are meant tangible matters like buildings, roads, etc., and not duties of officials in executive departments (IV, 3709-3713), or the continuance of a work indefinite as to completion and intangible in nature like the gauging of streams (IV, 3714, 3715). A general system of roads on which some work has been done can not be admitted as a work in progress. (Chairman Saunders, Feb. 21, 1917, 64th Cong., 2d sess., p. 3818.)

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§§ 821, 822, 823.

Rule XXI.

Thus the continuation of the following works has been admitted: A topographical survey (IV, 3796, 3797), a geological map (IV, 3795), marking of a boundary line (IV, 3717), marking graves of soldiers (IV, 3788), a list of claims (IV, 3717), and recoinage of coins in the Treasury (IV, 3807); but the following works have not been admitted: Investigation of materials, like coal (IV, 3721), scientific investigations (IV, 3719), duties of a commission (IV, 3720); (Chairman Madden, 66th Cong., 1st sess., p. 1529), extension of foreign markets for goods (IV, 3722), printing of a series of opinions indefinite in continuance (IV, 3718), free evening lectures in the District of Columbia (IV, 3789), continuation of an extra compensation for ordinary facility for carrying the mails (IV, 3808), although the continuation of certain special mail facilities has been admitted (IV, 3804-3806). But appropriations for rent and repairs of buildings of Government roads (IV, 3793, 3798) and bridges (IV, 3803) have been admitted as in continuation of a work (IV, 3777, 3778), although it is not in order as such to provide for a new building in place of one destroyed (IV, 3606). Nor is it in order to repair paving adjacent to a public building but in a city street, although it may have been laid originally by the Government (IV, 3779). The purchase of adjoining land for a work already established has been admitted under this principle (IV, 3766-3773) and also additions to existing buildings in cases where no limits of cost have been shown (IV, 3774, 3775). But the purchase of a separate and detached lot of land is not admitted (IV, 3776).

A provision of law authorizing Commissioners of the District of Columbia to take over and operate the fish wharves of the city of Washington was held insufficient authority to admit an appropriation for reconstructing the fish wharf. (Chairman Hull of Tennessee, Dec. 18, 1913, 63d Cong., 2d sess., p. 1180.)

Appropriations for new buildings at Government institutions have sometimes been admitted (IV, 3741-3750) when intended for the purposes of the institution (IV, 3747); but later decisions, in view of the indefinite extent of the practice made possible by the early decisions, have ruled out propositions to appropriate for new buildings in navy yards (IV, 3755-3759) and other establishments (IV, 3751-3754). Appropriations for new schoolhouses in the District of Columbia (IV, 3750), for new Army hospitals (IV, 3740), for new lighthouses (IV, 3728), armor-plate factories (IV, 3737-3739), and for additional playgrounds for children in the District of Columbia (IV, 3792) have also been held not to be in continuation of a public work.

By a former broad construction of the rule an appropriation of a new and not otherwise authorized vessel of the Navy has been held to be a continuance of a public work (IV, 3723, 3724); but since the Committee on Naval Affairs was specifically given jurisdiction of "the increase of ships or vessels of all classes of the Navy" this line of decisions has been

§ 821. Examples illustrating the continuation of a public work.

§ 822. New buildings at existing institutions as in continuance of a public work.

§ 823. New vessel for naval and other services as in continuance of a public work.

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§ 824.

overruled. Chairman Walsh, Feb. 11, 1921, p. 3020, 66th Cong., 3d sess.; Chairman Lehlbach, Jan. 22, 1926, p. 2621, 69th Cong., 1st sess.) While appropriations for new construction and procurement of aircraft and equipment for the Navy are not in order, appropriations for continuing experiments and development work on all types of aircraft are in order. (Chairman Lehlbach, Jan. 22, 1926, 69th Cong., 1st sess., p. 2623.) This former interpretation was confined to naval vessels, and did not apply to vessels in other services, like the Coast Survey or Lighthouse Department (IV, 3725, 3726), or to floating or stationary dry docks (IV, 3729-3736). The construction of a submarine cable in extension of one already laid was held not to be the continuation of a public work (IV, 3716), but an appropriation for the Washington-Alaska military cable has been held in order. (Chairman Tilson, 66th Cong., 3d sess., p. 2469.)

The provision of the rule forbidding in any general appropriation bill a
 § 824. Legislation “provision changing existing law” is construed to mean
 on appropriation the enactment of law where none exists (IV, 3812, 3813).
 bills. Existing law may be repeated verbatim in an appropriation bill (IV, 3814, 3815), but the slightest change of the text causes it to be ruled out (IV, 3817). The reenactment from year to year of a law intended to apply during the year of its enactment only is not relieved, however, from the point that it is legislation (IV, 3822). A provision proposing to construe existing law is in itself a proposition of legislation and therefore not in order (IV, 3936-3938). Also a proposition to change a rule of the House is subject to the point of order (IV, 3819). The object to be appropriated for may be described without violating the rule (IV, 3864). Propositions to establish affirmative directions for executive officers (IV, 3854-3859), even in cases where they may have discretion under the law so to do (IV, 3853), or to take away an authority or discretion conferred by law (IV, 3862, 3863), are subject to the point of order. Limits of cost for public works may not be made or changed (IV, 3581, 3761, 3865-3867) or contracts authorized (IV, 3868-3870).

In rare instances the House, by agreeing to a report from the Committee on Rules or by adopting an order under suspension of the rules (IV, 3845), has authorized legislation on general appropriation bills (IV, 3260-3263, 3839-3844). The principle seems to be generally accepted that the House proposing legislation on a general appropriation bill should recede if the other House persists in its objection (IV, 3904-3908). A paragraph which proposes legislation being permitted to remain may be perfected by a germane amendment (IV, 3823-3835, 3838), but this does not permit an amendment which adds additional legislation (IV, 3836, 3837, 3862). (Chairman

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Underwood, May 3, 1912, p. 5847.) And where a Senate amendment proposes legislation the same principle holds true (IV, 3836-3838, 3862).

Although the rule forbids on any general appropriation bill a provision "changing existing law,"²² which is construed to mean legislation generally, the House's practice has established the principle that certain "limitations" may be admitted. It being established that the House under its rules may decline to appropriate for a purpose authorized by law, so it may by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it (IV, 3936). The language of the limitation provides that no part of the appropriation under consideration shall be used for a certain designated purpose (IV, 3917-3926). And this designated purpose may reach the question of qualifications, for while it is not in order to legislate as to the qualifications of the recipients of an appropriation the House may specify that no part of the appropriation shall go to recipients lacking certain qualifications (IV, 3942-3952). The limitation may also withhold the money from a part of a designated purpose while appropriating for the remainder of it (V, 3936). The limitation must apply solely to the money of the appropriation under consideration and may not be made applicable to money appropriated in other acts (IV, 3927, 3928). (Chairman Campbell, June 12, 1919, p. 1063.) The limitation may not be applied directly to the official functions of executive officers (IV, 3957-3966), but it may restrict executive discretion so far as this may be done by a simple negative on the use of the appropriation (IV, 3968-3972). (Chairman Foster, Feb. 5, 1916, 64th Cong., 1st sess., p. 2161, and Chairman Rainey, Feb. 24, 1916, 64th Cong., 1st sess., p. 3094.) But coupling a denial of an appropriation with a negative restriction on official duties constitutes by reason of the use of a double negative an affirmative direction and is not in order. (Chairman Tilson, Feb. 11, 1926, 69th Cong., 1st sess., p. 3821.)

But such limitations must not give affirmative directions (IV, 3854-3859, 3975), and must not impose new duties upon an executive officer (Chairman Crisp, Mar. 11, 1916, 64th Cong., 1st sess., p. 3970); and must not be coupled with legislation not directly instrumental in affecting a reduction. (Chairman Saunders, Feb. 18, 1918, p. 2280.)

In construing a proposed limitation, if the Chair finds the purpose to be legislative, in that the intent is to restrict executive discretion to a degree that may be fairly termed a change in policy rather than a matter of administrative detail, he should sustain the point of order. (Chairman Luce, Jan. 8, 1925, 68th Cong., 2d sess., p. 1497.)

The fact that a provision would constitute legislation for only a year does not make it a limitation in order under the rule (IV, 3936). Nor may a proposition to construe a law be admitted (IV, 3936-3938). Care should also be taken that the language of limitation be not such as, when fairly construed, would change existing law (IV, 3976-3983) or justify an executive officer in assuming an intent to change existing law (IV, 3984). (Chairman Hicks, 67th Cong., 4th sess., p. 1422. See sec. 958 for complete ruling.)

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§ 825A.

"HOLMAN RULE," RETRENCHING EXPENDITURE.

A motion to recommit the District of Columbia appropriation bill with
 § 825A. Legislation instructions to reduce the proportion of the fund appro-
 reducing expend- priated from the Public Treasury from one-half, as pro-
 itures. vided in the bill, to one-fourth of the entire appropriation
 is in order, since the effect of the amendment if adopted would
 reduce the expenditure of public money although not reducing the
 amount of the appropriation. (Journal, 52d Cong., 1st sess., pp. 86, 87.)

The term "retrenchment" means the reduction of the amount of money
 to be taken out of the Federal Treasury by the bill, and therefore a reduc-
 tion of the amount of money to be contributed toward the expenses of the
 District of Columbia is in order as a retrenchment. (Chairman Graham,
 of Illinois, May 1, 1924, 68th Cong., 1st sess, p. 7638.)

An amendment to the pension appropriation bill tending to increase the
 class of persons prohibited from the benefits of the pension laws is in order,
 because its effect would be to reduce expenditures. (Cong. Record, 52d
 Cong., 1st sess., p. 1792.)

An amendment to the pension appropriation bill providing that no fee
 shall be paid to a member of an examining board for services in which he
 did not actually participate is not subject to a point of order under this
 rule, since, while changing existing law, its effect is to reduce expenditures
 by decreasing compensation. (Cong. Record, 52d Cong., 1st sess., p. 1792.)

The following provision in the Army appropriation bill, namely, "That
 hereafter no money appropriated for Army transportation shall be used in
 payment for the transportation of troops and supplies of the Army" over
 certain lines of railroad which are indebted to the Government, was held
 subject to the point of order under this rule on the ground that on its face
 it did not reduce expenditures in any of the three methods enumerated in
 the first portion of the rule; that such a motion should come officially from
 the committee having jurisdiction, and not as an integral part of an appro-
 priation bill (IV, 3927).

A provision in the sundry civil appropriation bill "that all articles
 imported for the use of the Lighthouse Establishment shall be admitted
 without the payment of duty" is subject to the point of order that it changes
 law and is not within the exceptions mentioned in the rule (IV, 3890).

An amendment fixing a minimum compensation of an officer of the Gov-
 ernment is subject to the point of order that it changes existing law without
 reducing expenditures (Record, 52d Cong., 1st sess., p. 4337); but an
 amendment fixing a maximum compensation is in order if the proposed
 maximum fixes a lower compensation than that authorized by law. (Chair-
 man Graham, Aug. 12, 1921, p. 4948.)

An amendment proposed to an item for the recoinage of uncurrent frac-
 tional silver, which amendment struck out the amount appropriated and

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added a provision for the coinage of all the bullion in the Treasury into standard silver dollars, the cost of such coinage and recoinage to be paid out of the Government's seigniorage, was held not to be in order under the rule; first, because not germane to the subject matter of the bill (the sundry civil); second, because it did not appear that any retrenchment of expenditure would result, the seigniorage being the property of the Government as other funds in the Treasury. (Record, 1, 52, p. 4439.)

To an item of appropriation for inland transportation of mails by star routes an amendment was offered requiring the Postmaster General to provide routes and make contracts in certain cases, with the further provision "and the amount of appropriation herein for star routes is hereby reduced to \$500." A point of order made against the first or legislative part of the amendment was sustained, which decision was, on appeal, affirmed by the committee. (Record, 1, 52, pp. 4959-4961.)

To a clause appropriating for transportation of foreign mails an amendment providing that no further contract shall be entered into by the Postmaster General under the act known as the "subsidy act" was held not in order because not directly retrenching expenditure in the manner prescribed in the rule. (Record, 1, 52, p. 5005.)

To an item of appropriation for transportation of foreign mails, an amendment providing that "no money hereby appropriated," etc., shall be expended in carrying out contracts hereafter made under the act known as the "subsidy act," was held to be in order under the rule. (Record, 1, 52, pp. 5003, 5004.)

To a clause appropriating for the foreign mail service an amendment reducing the appropriation, and in addition repealing the act known as the "subsidy act," was held not in order because the repealing of this act was not germane to the appropriation bill; and that to be in order both branches of the amendment must be germane to the bill. (Record, 1, 52, pp. 5005, 5038.)

A provision in the agricultural appropriation bill transferring the supervision of the importation of animals from the Treasury to the Department of Agriculture is out of order, being a provision changing law and not retrenching expenditure. (IV, 3886.)

An amendment reducing the amount appropriated for railroad transportation of mails, coupled with a proviso directing the Postmaster General to reduce 10 per cent the annual compensation for transportation of mails on

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railroads, was held to be in order as within the exceptions to the rule. (IV, 3891.)

An amendment to an appropriation bill, providing that in the purchase of materials for public purposes preference should be given to domestic products, was held out of order as being a change of law and not a mere limitation of the expenditure of the fund appropriated. (Cong. Record, 2, 52, p. 1020.)

An amendment was proposed reducing by one the number of clerks in a bureau provided for in the bill, coupled with a distinct provision repealing part of an act, the effect of which repeal would dispense with the one clerk in such bureau. Held that so much of the amendment as provided for the repeal was subject to the point of order, its effect not being directly to reduce expenditures. (IV, 3889.)

The reduction of expenditure must appear as a necessary result, in order to bring an amendment or provision within the exception to the rule. It is not sufficient that such reduction would probably, or would in the opinion of the Chair, result therefrom. (IV, 3887.)

In an amendment providing that a certain class of persons, now on the pension rolls, shall hereafter not receive pensions, the retrenchment of expenditure is apparent, and the amendment is in order. (IV, 3887.)

To an item appropriating "for free delivery service, \$10,450,000," an amendment was submitted striking out that sum and inserting "\$10,449,000, to be disbursed in such manner," etc. (the manner prescribed being a new provision of law). It was held that the amendment was germane; that while it changed existing law, it reduced the amount appropriated by the bill, and was therefore in order. (Record, 1, 52, pp. 4909, 4911.) Upon appeal, this decision was, after full debate, sustained by the Committee of the Whole. (Record, 1, 52, p. 4920.)

To a bill making appropriations for the Indian Service, an amendment transferring the management of Indian affairs from the Department of the Interior to the War Department, but providing no reduction of expenditures, was held to be germane as an amendment, but subject to the point of order, as being a change of law, and no retrenchment appearing as the result of the proposed change. (IV, 3885.)

To the pension appropriation bill, a proposed amendment transferring the Pension Bureau from the Department of the Interior to the War Department; also providing that the offices of Commissioner and Deputy Commis-

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sioner of Pensions be abolished, and that the duties of those offices be performed by Army officers, to be designated for that purpose, without additional pay, was held to be in order, being germane and retrenching expenditures in the manner provided in the rule (IV, 3887).

On the post office appropriation bill an amendment striking out \$9,500,000 for transportation of mails on railroad routes, and substituting "For transportation on railroad routes \$9,490,000, of which sum \$150,000 may be used by the Postmaster General to maintain and secure from railroads necessary and special facilities for the Postal Service for the fiscal year ending June 30, 1888," held in order under rule, as it reduced the appropriation (IV, 3892).

The amendment must not only show on its face an attempt to retrench but must also be germane to some provision in the bill even though offered by direction of the committee having jurisdiction of the subject matter of the amendment. (Chairman Hughes, Dec. 6, 1911.)

An amendment changing existing law, under proviso of clause 2, Rule XXI, must be authorized by the House committee having jurisdiction of subject matter of legislation. (Chairman Garrett, Jan. 16, 1912, 62d Cong., 2d sess., p. 986; for ruling in full, see sec. 953. Chairman Hull, Dec. 20, 1913, 63d Cong., 2d sess., p. 1293.)

An amendment proposing legislation upon an appropriation bill is in order if germane and reduces the amount appropriated by the bill. Chairman Johnson, of Kentucky, June 21, 1912, 62d Cong., 2d sess., p. 8420, ruled in order an amendment striking out of sundry civil bill appropriation for enlarging the Capitol Grounds and amendment repealing the act authorizing such enlargement. (For ruling in full, see sec. 955.)

An amendment reducing the number of Cavalry regiments from 15 to 10 is in order, for while the Chair can not fix the amount of the reduction, that a reduction will follow seems to be a fair and necessary conclusion. (Chairman Saunders, 62d Cong., 2d sess., p. 1903.)

A provision abolishing two offices and creating in lieu thereof one office at a smaller salary than the combined salary of the two offices abolished is in order. (Chairman Byrns of Tennessee, Feb. 19, 1914, 63d Cong., 2d sess., p. 3676.)

A paragraph of legislation reported in an appropriation bill to be in order must on its face show a retrenchment in one of the three methods provided in the rule. (Chairman Lehlbach, Mar. 17, 1926, 69th Cong., 1st sess., p. 5804.)

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It is not enough that the provision reduces the number and salary of the officers of the United States or reduces the compensation of any person paid out of the Treasury, but it "must retrench expenditures" by doing that. (Chairman Sanders of Indiana, Dec. 9, 1922, 67th Cong., 4th sess.)

Where a paragraph containing new legislation provides in one part for a discharge of employees, which means a retrenchment, and in another part embodies legislation to bring about the particular retrenchment which in turn shows on its face an expenditure the amount of which is not apparent, the Chair is unable to hold that the net result will retrench expenditures. But where the additional legislation does not show on its face an additional expenditure, the Chair will not speculate as to a possible expenditure under the additional legislation. (Chairman Sanders of Indiana, Dec. 9, 1922, 67th Cong., 4th sess., p. 257. For decision in full, see sec. 957.)

Under the proviso of the rule the committee having jurisdiction of the subject matter of the amendment must formally report the proposition to the House. (Chairman Chindblom, Jan. 6, 1925, 68th Cong., 2d sess., p. 1349.)

3. No bill for the payment or adjudication of any private claim against the Government shall be referred, except by unanimous consent, to any other than the following-named committees, viz: To the Committee on Invalid Pensions, to the Committee on Pensions, to the Committee on Claims, to the Committee on War Claims, to the Committee on the Public Lands, and to the Committee on Accounts.

§ 826. Restriction
on the reference
of claims.

This rule was adopted in 1885 to prevent the overburdening of committees charged with the examination of public questions (IV, 4380).

It does not apply to public bills, like a bill to establish a commission to settle claims against the Government (IV, 4381). As provided in clause 2

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of Rule XXII the erroneous reference of a private bill under that rule does not confer jurisdiction upon the committee, and a point of order is good when the bill comes up for consideration (IV, 4382-4389). The committees enumerated above may report appropriations within the limits of their jurisdiction. (Chairman Campbell, June 24, 1921, p. 3050.)

4. No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, nor shall an amendment proposing an appropriation be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A question of order on an appropriation in any such bill, joint resolution, or amendment thereto may be raised at any time.

§ 826A. Restriction of power to report appropriations.

This rule was adopted June 1, 1920 (66th Cong.).

A point of order under this rule can not be raised against a motion to suspend the rules (Feb. 7, 1921, 66th Cong., 3d sess., p. 2742), and it can not be made against a Senate amendment to an appropriation bill (Feb. 15, 1921, 66th Cong., 3d sess., p. 3208), but it may be directed against an item of appropriation in a Senate bill and in such event takes the form of an amendment (Aug. 3, 1921, 67th Cong., 1st sess., p. 4620). The rule does not apply to private bills since the committees having jurisdiction of bills for the payment of private claims may report bills making appropriations within the limits of their jurisdiction (June 24, 1921, 67th Cong., 1st sess., p. 3050). (Chairman Sanders of Indiana, Dec. 12, 1924, 68th Cong., 2d sess., p. 538.)

The point of order should be directed to the item of appropriation in the bill and not to the act of reporting the bill (Jan. 7, 1921, 66th Cong., 3d sess., p. 1111; for complete ruling, see sec. 959), and can not be directed to entire bill or entire section (Feb. 14, 1923, 67th Cong., 4th sess., p. 3664).

The term "appropriation" in the rule means the payment of funds from the Treasury, and the words "warranted and made available for expendi-

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§ 827.

ture for payments" are equivalent to "is hereby appropriated" and therefore not in order (July 6, 1921 67th Cong., 1st sess., p. 3388). The words "available until expended," making an appropriation already made for one year available for ensuing years, are not in order (July 27, 1921, 67th Cong., 1st sess., p. 4350). Language reappropriating, making available, or diverting an appropriation or a portion of an appropriation already made for one purpose to another is not in order (Aug. 11, 1921, 67th Cong., 1st sess., p. 4891). A direction to a departmental officer to pay a certain sum out of unexpended balances is equivalent to an appropriation and not in order (Nov. 9, 1921, 67th Cong., 1st sess., p. 7604). Language authorizing the use of funds of the Shipping Board is not in order (Jan. 31, 1921, 67th Cong., 4th sess., p. 2798). A direction to pay out of Indian trust funds is not in order (Feb. 3, 1923, 67th Cong., 4th sess., p. 2988).

An amendment proposing an appropriation offered to a paragraph proposing an appropriation is not in order (Feb. 3, 1923, 67th Cong., 4th sess., p. 2988).

An amendment increasing the duties of a commission is not necessarily an appropriation (Sept. 16, 1922, 67th Cong., 2d sess., p. 12765). Language authorizing payment from an appropriation to be made or authorizing payment from an appropriation that has not yet been made is in order (Jan. 31, 1923, 67th Cong., 4th sess., p. 2794).

RULE XXII.

OF PETITIONS, MEMORIALS, BILLS, AND RESOLUTIONS.

1. Members having petitions or memorials or bills

§ 827. Introduction of a private nature to present may and reference of petitions, memorials, deliver them to the Clerk, indorsing and private bills. their names and the reference or disposition to be made thereof; and said petitions and

memorials and bills of a private nature, except such as, in the judgment of the Speaker, are of an obscene or insulting character, shall be entered on the Journal, with the names of the Members presenting them, and the Clerk shall furnish a transcript of such entry to the official reporters of debates for publication in the Record.

At the first organization of the House in 1789 the rules then adopted provided for the presentation of petitions to the House by the Speaker and Members, and for the introduction of bills by motion for leave. In 1842 it was found necessary, in order to save time, to provide that petitions and memorials should be filed with the Clerk. In 1870, 1879, and 1887 the practice as to petitions was extended to private bills, at first as to certain classes and later so that all should be filed with the Clerk (IV, 3312, 3365).

Petitions, memorials, and other papers addressed to the House may be presented by the Speaker as well as by a Member (IV, 3312). Petitions from the country at large are presented by the Speaker in the manner prescribed by the rule (III, 2030; IV, 3318). A Member may present a petition from people of a State other than his own (IV, 3315, 3316). The House itself may refer one portion of a petition to one committee and another portion to another committee (IV, 3359, 3360), but ordinarily the reference of a petition does not come before the House itself. A committee may receive a petition only through the House (IV, 4557).

While the parliamentary law provides that the House may commit a portion of a bill, or a part to one committee and part to another (V, 5558), yet under the practice of the House a bill or joint resolution may not be divided for reference, although it may contain matters properly within the jurisdiction of several committees (IV, 4372, 4376).

The fraudulent introduction of a bill involves a question of privilege, and a bill so introduced was ordered stricken from the files (IV, 3388).

§ 828. Duties of Speaker and Members in presenting petitions.

§ 829. As to division of bills for reference.

§ 830. Fraudulent introduction of a bill.

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§§ 831, 832.

2. Any petition or memorial or private bill excluded

§ 831. Correction
of errors in
reference; and
relation to
jurisdiction.

under this rule shall be returned to the Member from whom it was received; and petitions and private bills which have been inappropriately referred may,

by the direction of the committee having possession of the same, be properly referred in the manner originally presented; and an erroneous reference of a petition or private bill under this clause shall not confer jurisdiction upon the committee to consider or report the same.

This rule was first adopted in 1880, although the portion relating to the return of certain petitions and bills was adapted from an older rule of 1842 (IV, 3312, 3365).

Errors in reference of petitions, memorials, or private bills are corrected at the Clerk's table, without action by the House, at the suggestion of the committee holding possession (IV, 4379). As provided in the rule, the erroneous reference of a private House bill does not confer jurisdiction, and a point of order is good when the bill comes up for consideration either in the House or in Committee of the Whole (IV, 4382-4389). But in cases wherein the House itself refers a private House or Senate bill a point of order may not be raised as to jurisdiction (IV, 4390, 4391).

3. All other bills, memorials, and resolutions may,

§ 832. Introduction,
reference, and
change of reference
of public bills,
memorials, and
resolutions.

in like manner, be delivered, indorsed with the names of Members introducing them, to the Speaker, to be by him referred, and the titles and references

thereof and of all bills, resolutions, and documents

referred under the rules shall be entered on the Journal and printed in the Record of the next day, and correction in case of error of reference may be made by the House, without debate, in accordance with Rule XI, on any day immediately after the reading of the Journal, by unanimous consent, or on motion of a committee claiming jurisdiction, or on the report of the committee to which the bill has been erroneously referred.

The rule of 1789 provided that all bills should be introduced on report of a committee or by motion for leave. By various modifications it was first provided that all classes of private bills should be introduced by filing them with the Clerk, and in 1890 this system was by this rule extended to all public bills (IV, 3365).

The motion for a change of reference and subsidiary motions take precedence over motions to go into the Committee of the Whole for the consideration of appropriation bills and the consideration of conference reports. (Speaker Clark, Mar. 14, 1918, p. 3491.) But the motion is not in order on Calendar Wednesday. (Speaker Clark, Mar. 13, 1918, p. 3443.) The motion may be amended, but the amendment, like the original motion, is subject to the requirement that it be authorized by the committee. (Speaker Clark, Feb. 13, 1918, p. 2070.) The motion must apply to a single bill and not to a class of bills. (Speaker Clark, Dec. 18, 1917, p. 516.)

According to the later practice the erroneous reference of a public bill, if it remain uncorrected, in effect gives jurisdiction to the committee receiving it (IV, 4365-4371). And it is too late to move a change of reference after such committee has reported the bill. (Speaker Clark, Dec. 15, 1917, p. 349.) Two or more Members can not jointly introduce a bill or resolution under this rule. (Special committee, 60th Cong., 2d sess., p. 3809, reported against this practice, and the report was adopted by the House.)

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§§ 833-835.

4. When a bill, resolution, or memorial is introduced "by request," these words shall be entered upon the Journal and printed in the Record.

§ 833. Introduction of bills, resolutions, or memorials by request.

This rule was adopted in 1888 (IV, 3366).

It has never been the practice of the House to permit the names of the persons requesting the introduction of the bill to be printed in the Record.

5. All resolutions of inquiry addressed to the heads of executive departments shall be reported to the House within one week after presentation.

§ 834. Resolutions of inquiry.

The House has exercised the right, from its earliest days, to call on the President and heads of departments for information. The first rule on the subject was adopted in 1820 for the purpose of securing greater care and deliberation in the making of requests. The present form of rule, in its essential features, dates from 1879 (III, 1856).

Resolutions of inquiry are usually simple rather than concurrent in form (III, 1875), and are never joint resolutions (III, 1860). A resolution authorizing a committee to request information has been treated as a resolution of inquiry (III, 1860). It has been considered proper to use the word "request" in asking for information from the President and "direct" in addressing the heads of departments (III, 1856, footnote, 1895). It is usual for the House in calling on the President for information, especially with relation to foreign affairs, to use the qualifying clause "if not incompatible with the public interest" (II, 1547; III, 1896-1901; V, 5759). But in some instances the House has made its inquiries of the President without condition, and has even made the inquiry imperative (III, 1896-1901). Resolutions of inquiry are delivered under direction of the Clerk (III, 1879) and are answered by subordinate officers of the Government either directly or through the President (III, 1908-1910).

§ 835. Forms of resolutions of inquiry and delivery thereof.

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§§ 836, 837.

Rule XXII.

The practice of the House gives to resolutions of inquiry a privileged status. Thus, they are privileged for report and consideration at any time after their reference to a committee (III, 1870), but not before (III, 1857), and are in order for consideration only on motion directed to be made by the committee reporting the same. (Speaker Gillett, Dec. 13, 1924, 68th Cong., 2d sess., p. 605.) And only resolutions addressed to the President and the heads of the executive departments have the privilege (III, 1861-1864). To enjoy the privilege a resolution should call for facts rather than opinions, should not require investigations (III, 1872-1874), and should not present a preamble (III, 1877, 1878); but if a resolution on its face calls for facts, the Chair will not investigate the probability of the existence of the facts called for. (Speaker Clark, Aug. 12, 1913, 63d Cong., 1st sess., p. 3315.) However, a resolution inquiring for such facts as would inevitably require the statement of an opinion to answer such inquiry is not privileged. (Speaker Longworth, Feb. 11, 1926, 69th Cong., 1st sess., p. 3805.)

Questions of privilege (as distinguished from privileged questions) have sometimes arisen in cases wherein the head of a department has declined to respond to an inquiry and the House has desired to demand a further answer (III, 1891); but a demand for a more complete reply (III, 1892) or a proposition to investigate as to whether or not there has been a failure or refusal to respond may not be presented as involving the privileges of the House (III, 1893).

Committees are required to report resolutions of inquiry back to the House within one week of the reference, and this week's time is construed to be seven days, exclusive of either the first or last day (III, 1858, 1859). If a committee refuses or neglects to report the resolution back, the House may reach the resolution only by a motion to discharge the committee (III, 1865). The ordinary motion to discharge a committee is not privileged; but the practice of the House has given privilege to the motion in cases of resolutions of inquiry (III, 1866-1870). And this motion to discharge is privileged at the end of the week, even though the resolution may have been delayed in reaching the committee (III, 1871). The motion to discharge is not debatable (III, 1868).

§ 837. Discharge of a committee from a resolution of inquiry.

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Rule XXIII.

§§ 838-840.

The President having failed to respond to a resolution of inquiry, the House respectfully reminded him of the fact (III, 1890).
 § 838. Resolutions of Inquiry as related to the Executive. In 1796 the House declared that its constitutional requests of the Executive for information need not be accompanied by a statement of purposes (II, 1509).
 As to the kind of information which may be required, especially as to the papers that may be demanded, there has been much discussion (III, 1700, 1738, 1888, 1902, 1903). There have been several conflicts with the Executive (II, 1534, 1561; III, 1884, 1885-1889, 1894) over demands for papers and information, especially when the resolutions have called for papers relating to foreign affairs (II, 1509-1513, 1518, 1519).

RULE XXIII.

OF COMMITTEES OF THE WHOLE HOUSE.

1. In all cases, in forming a Committee of the Whole House, the Speaker shall leave his chair after appointing a Chairman to preside, who shall, in case of disturbance or disorderly conduct in the galleries or lobby, have power to cause the same to be cleared.

§ 839. Selection of Chairman of Committee of the Whole; and his power to preserve order.

This rule, adopted in 1880, was made from two older rules dating from 1789 and modified in 1794 to provide for the appointment of the Chairman instead of the inconvenient method of election by the committee (IV, 4704).

The Sergeant-at-Arms attends the sittings of the Committee of the Whole and, under direction of the Chairman, maintains order (I, 257). In rare cases wherein the Chairman has been defied or insulted he has directed the committee to rise, left the chair and, on the chair being taken by the Speaker, has reported the facts to the House (II, 1350, 1651, 1653). While the Committee of the Whole does not control the Congressional Record, the Chairman may direct the exclusion of disorderly words spoken by a Member after he has been called to order (V, 6987), but may not determine the privileges of a Member under general "leave to print" (V, 6988). The Chairman decides questions of order arising in the committee independently of the Speaker (V, 6927, 6928), but has declined to consider a question arising in the House just before the committee began to sit (IV, 4725, 4726). He recognizes for debate (V, 5003); but like the Speaker is forbid-

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den to recognize for requests to suspend the rule of admission to the floor (V, 7285). He may direct the committee to rise when the hour previously fixed for adjournment of the House arrives, in which case he reports in the regular way (IV, 4785); but if the committee happens to be in session at the hour fixed for the meeting of the House on a new legislative day, it rests with the committee and not with the Chairman to determine whether or not the committee shall rise (V, 6736, 6737).

2. Whenever a Committee of the Whole House or

§ 841. Failure of a quorum in Committee of the Whole.

of the Whole House on the state of the Union finds itself without a quorum, which shall consist of one hundred Members, the Chairman shall cause the roll to be called, and thereupon the committee shall rise, and the Chairman shall report the names of the absentees to the House, which shall be entered on the Journal; but if on such call a quorum shall appear, the committee shall thereupon resume its sitting without further order of the House.

It was the early practice for the Committee of the Whole to rise on finding itself without a quorum (IV, 2977), and it was not until 1847 that a rule was adopted. In 1880 the rule was put in its present form, except for the provision making the quorum one hundred instead of the quorum of the House itself, which was adopted in 1890 (IV, 2966).

Formerly on the failure of a quorum the roll was called but once (IV, 2967), but in the later practice the roll is called twice as in other roll calls. Ordinarily when the roll has been called and the committee has risen, it resumes its session by direction of the Speaker on the appearance of a quorum (IV, 2968). The quorum which must appear to enable the Speaker to direct the committee to resume its sitting is a quorum of the committee and not of the House (IV, 2970, 2971). It was formerly held that after the committee has risen and reported its roll call, a motion to adjourn is in order before direction as to resumption of the session (IV, 2969), but under the later practice the committee immediately resumes its session without intervening motion or unanimous consent requests (Speaker Clark, June 20, 1914, p. 10819; Speaker Gillett, June 20, 1922, 67th Cong., 2d sess., p. 9045). The failure of a quorum of the House to answer on this roll call does not interfere with the authority of the Speaker to direct the committee to resume its session (IV, 2969). The Chair may count those present and not voting in determining whether a quorum is present (Feb. 27, 1923, 67th Cong., 4th sess., p. 4816).

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The presence of a quorum is not necessary for a motion that the Committee of the Whole rise (IV, 2975, 2976, 4914); but

§ 842. Rising and reports of Committee of the Whole as related to quorum. when the committee rises without a quorum, it may not report the bills it has acted on (IV, 2972, 2973), and such bills as have been laid aside to be reported remain in the committee until the next occasion, when the committee rises without question as to a quorum (IV, 4913). The fact that the vote whereby the committee rises does not show a quorum (IV, 4914) or that a point of no quorum has been made without an ascertainment thereof (IV, 2974), does not prevent a report of the bills already acted on. The passage of a bill by the House is not invalidated by the fact that the Committee of the Whole reported it on an erroneous supposition that a record vote had disclosed a quorum (IV, 2972).

3. All motions or propositions involving a tax or charge upon the people; all proceedings touching appropriations of money, or bills making appropriations of money or property, or requiring such appropriation to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, or referring any claim to the Court of Claims, shall be first considered in a Committee of the Whole, and a point of order under this rule shall be good at any time before the consideration of a bill has commenced.

The first form of this rule was adopted in 1794, and it has been perfected by amendments in 1874 and 1896 (IV, 4792).

To require consideration in Committee of the Whole, a bill must show on its face that it falls within the requirements of the rule (IV, 4811-4817), but where the expenditure is a mere matter of speculation (IV, 4818-4821), or where the bill might involve a charge, but does not necessarily do so (IV, 4809, 4810), the rule does not apply. Resolutions reported by the Committee on Accounts appropriating from the contingent fund of the House are considered in the House. (Speaker Clark, Apr. 24, 1911, 1st sess. 62d Cong., p. 574.) Appropriations from contingent fund by other committees than Accounts are considered in Committee

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of the Whole. (Speaker Clark, Aug. 15, 1911, 1st sess. 62d Cong., p. 3986.) A bill providing for an expenditure which is to be borne otherwise than by the Government (IV, 4831), or relating to money in the Treasury in trust (IV, 4835, 4836, 4853), is not governed by the rule. But where a bill sets in motion a train of circumstances destined ultimately to involve certain expenditures, it must be considered in Committee of the Whole (IV, 4827), as must also bills ultimately authorizing officials in certain contingencies to part with property belonging to the United States. (Speaker Clark, June 30, 1914, Record, p. 11404, 63d Cong., 2d sess.) To require consideration in Committee of the Whole, the bill must show on its face that it falls within the rule; but where the expenditure is a mere matter of speculation the rule does not apply. (Speaker Clark, Dec. 14, 1911, 62d Cong., 2d sess., p. 376.) The requirements of the rule apply to amendments as well as to bills (IV, 4793, 4794), and also to any portion of a bill requiring an appropriation, even though it be merely incidental to the bill's main purpose (IV, 4825). Under the later practice general (as well as private and special) bills providing for the adjudication and payment of claims are held to be within the requirements of the rule (IV, 4856-4859).

The House may consider in Committee of the Whole subjects not specified in the rule (IV, 4822), but this was more frequent in the earlier practice than has been in the later (III, 1984, 2415). While conference reports were formerly considered in Committee of the Whole, they may not be sent there on the suggestion of the point of order that they contain matter ordinarily requiring consideration therein (V, 6559-6561). When a bill is made a special order (IV, 3217-3224), or when unanimous consent is given for its consideration (IV, 4823), the effect is to discharge the Committee of the Whole and bring the bill before the House itself for its consideration (IV, 3216), and in such event the bill is considered "in the House as in the Committee of the Whole." (Feb. 16, 1920; May 22, 1920.) When a bill once considered in Committee of the Whole is recommitted, it is not, when again reported, necessarily subject to the point of order that it must be considered in Committee of the Whole (IV, 4828, 4829; V, 5545, 5546, 5591). Authorizations of expenditures from the contingent fund, under the later rulings (IV, 4862-4867), and reports from the Committee on Printing relating to printing for the use of the two Houses, do not fall within the specifications of the rule (IV, 4868).

Provisions placing liability jointly on the United States and the District of Columbia (IV, 4833), granting an easement on public lands or in streets belonging to the United States (IV, 4840-4842), dedicating public land to be forever used as a public park (IV, 4837, 4838), providing site for a statue (Speaker Clark, Feb. 13, 1918, p. 2081), confirming grants of public lands

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(IV, 4843) and creating new offices (IV, 4824, 4846), have been held to require consideration in Committee of the Whole. Indian lands have not been considered "property" of the Government within the meaning of the rule (IV, 4844, 4845; Speaker Longworth, Feb. 23, 1927, 69th Cong., 2d sess., p. 4572). And while a bill removing the rate of postage has been held to be within the rule as "involving a tax or charge" (IV, 4861), taxes on bank circulation have not been so considered (IV, 4854, 4855).

4. In Committees of the Whole House business on their calendars may be taken up in regular order, or in such order as the committee may determine, unless the bill to be considered was determined by the House at the time of going into committee, but bills for raising revenue, general appropriation bills, and bills for the improvement of rivers and harbors shall have precedence.

§ 847. Order of business in Committee of the Whole.

This rule applies to the two committees of the whole which have been established by the practice of the House (IV, 4705), the Committee of the Whole House on the state of the Union, which considers public bills, and the Committee of the Whole House, which considers private business (IV, 3115). The early practice left the order of taking up bills to be determined entirely by the committee, but in 1844 the House began by rule to regulate the order, and in 1880 adopted the present rule (IV, 4729). The latter portion of the rule is rarely used, since the ordinary practice is to consider general appropriation bills under section 9 of Rule XVI, which gives privilege to motions to go into committee to consider a designated bill of this class (IV, 3072).

The power of the committee to determine the order of considering bills on its calendar is construed to authorize a motion to establish an order (IV, 4730) or a motion to take up a specified bill out of its order (IV, 4731, 4732). Except in cases wherein the rules make specific provisions therefor a motion is not in order in the House to fix the order in which business on the calendars of the Committee of the Whole shall be taken up (IV, 4733). The Committee of the Whole having voted to consider a particular bill, and consideration having begun, a motion to reconsider or change that vote is not in order (IV, 4765). When there is unfinished business in Committee of the Whole, it is usually first in order (IV, 4735).

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5. When general debate is closed by order of the House, any Member shall be allowed five minutes to explain any amendment he may offer, after which the Member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it, and there shall be no further debate thereon, but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to an amendment; and neither an amendment nor an amendment to an amendment shall be withdrawn by the mover thereof unless by the unanimous consent of the committee.

§ 848. General debate and amendment under the five-minute rule in Committee of the Whole.

A rule of 1789 provided that bills should be read and debated in Committee of the Whole and in the House by clauses. Although that rule has disappeared, the practice continues in Committee of the Whole, although not in the House. Originally there was unlimited debate in Committee of the Whole both as to the bill generally and also as to any amendment; but in 1841 the rule that no Member should speak more than an hour was applied both to the Committee of the Whole and the House. At the same time another rule was adopted to prevent indefinite prolongation of debate in Committee of the Whole by permitting the House by majority vote to order the discharge of the Committee of the Whole from the consideration of a bill after pending amendments and any other amendments should be voted on without debate. The effect of this was to empower the House to close general debate at any time after it had actually begun in the committee; and thereby to require amendments to be voted on without debate. In 1847 a rule provided that any Member proposing an amendment should have five minutes in which to explain it, and in 1850 an amendment to the rule permitted also five minutes in opposition and guarded against abuse by forbidding the withdrawal of an amendment when once offered (V, 5221).

The motion to close general debate in Committee of the Whole, successor in the practice to the motion to discharge provided by the rule of 1841, is made in the House pending the motion that the House resolve itself into committee, and not after the House has voted to go into committee

§ 849. Motion to close general debate in Committee of the Whole.

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(V, 5208); and though not debatable, the previous question is sometimes ordered on it to prevent amendment (V, 5203); but in case the previous question is ordered, the 40 minutes debate under clause 3 of Rule XXVII is not allowed. (Speaker Clark, Jan. 27, 1912, 62d Cong., 2d sess., p. 1407. General debate must have already begun in Committee of the Whole before the motion to limit it is in order in the House (V, 5204-5206). The motion may not apply to a series of bills (V, 5209), but may apply to the whole or a particular portion of a message of the President (V, 5218); and it must apply to the whole and not to a part of a bill (V, 5207). A proposition for a division of time may not be made as a part of it (V, 5210, 5211). The motion may not be made in Committee of the Whole (V, 5217); but in absence of an order by the House the Committee of the Whole may by unanimous consent determine as to general debate (V, 5232). Where the House has fixed the time the committee may not, even by unanimous consent, extend it (V, 5212-5216). The general debate must close before amendments may be offered (IV, 4744; V, 5221); and it is closed by the fact that no Member desires to participate further (IV, 4745). Motions for disposition of the bill are not in order before general debate is closed (IV, 4778).

The reading of the bill for amendment is not specifically required by the present form of the rule; but is done under a practice which was originally instituted by the rule of 1789 and has continued, although that rule was eliminated, undoubtedly by inadvertence, in the codification of 1880 (V, 5221). Revenue, general appropriation, lighthouse, and river and harbor bills are generally read by paragraphs; other bills by sections (IV, 4738, 4740); and while the matter is very largely in the discretion of the Chair (63d Cong., 2d sess., p. 16124; Jan. 24, 1923, p. 2353; Jan. 15, 1925, p. 1917), the Committee of the Whole has overruled his decision (June 3, 1926, p. 10644). A Senate amendment, however, is read in entirety, and not by either paragraphs or sections (V, 6194). When a paragraph or section has been passed it is not in order to return thereto (IV, 4742, 4743) except by unanimous consent (IV, 4746, 4747) or when, the reading of the bill being concluded and a motion to rise being decided in the negative, the committee on motion votes to return (IV, 4748). But the chairman may direct a return to a section whereon, by error, no action was had on a pending amendment (IV, 4750). Points of order against a paragraph should be made before the next paragraph is read (V, 6931). The paragraph or section having been read, and an amendment offered, the right to explain or oppose that amendment has precedence of a motion to amend it (IV, 4751). In this debate recognitions are governed by the conditions of the pending question rather than by the general relations of majority and minority (V, 5223). The Member recognized may not yield time (V, 5035-5037) and must confine himself to the subject (V, 5240-5256).

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The pro forma amendment to "strike out the last word" has long been used for purposes of debate or explanation where an actual amendment is not contemplated (V, 5778); but a Member who has occupied five minutes on a pro forma amendment may not lengthen this time by making another pro forma amendment (V, 5222).

§ 851. Pro forma amendments under the five-minute rule.

§ 852. Closing the five-minute debate in Committee of the Whole.

6. The committee may, by the vote of a majority of the members present, at any time after the five minutes' debate has begun upon proposed amendments to any section or paragraph of a bill, close all debate upon such section or paragraph or, at its election, upon the pending amendments only (which motion shall be decided without debate); but this shall not preclude further amendment, to be decided without debate.

This rule was adopted in 1860, with amendment in 1880 and 1885 (V, 5221, 5224).

The motion to close debate is not in order until such debate has begun (V, 5225), which means after one speech of five minutes (V, 5226). The House, as well as the Committee of the Whole, may close the five-minute debate after it has begun (V, 5229, 5231), but rarely exercises this right. The motion to close debate, while not debatable, may be amended (V, 5227). The closing of debate on the last section of a bill does not preclude debate on a substitute for the whole text (V, 5228). The motion may be ruled out when dilatory (V, 5734).

§ 853. The motion to strike out the enacting words of a bill.

7. A motion to strike out the enacting words of a bill shall have precedence of a motion to amend, and, if carried, shall be considered equivalent to its rejection. Whenever a bill is reported from a Committee of the Whole with an adverse recommendation and such recommendation is disagreed to by the House, the bill shall stand recommitted to the said committee without further action by the House, but before the ques-

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tion of concurrence is submitted it is in order to entertain a motion to refer the bill to any committee, with or without instructions, and when the same is again reported to the House it shall be referred to the Committee of the Whole without debate.

The practice of rejecting a bill by striking out the enacting words dates from a time as early as 1812, but the first rule on the subject was not adopted until 1822. By amendments in 1860, 1870, and 1880 the rule has been brought into its present form (V, 5326). The rule before 1880 applied in the House as well as in Committee of the Whole. In the revision of 1880 for the first time it was classified among the rules relating to the Committee of the Whole, but there is nothing to indicate that this change was intended to limit the scope of the motion. It was probably a recognition merely of the fact that the motion was used most frequently in Committee of the Whole (V, 5326, 5332).

The motion may not be made until the first section of the bill has been read (V, 5327). Having precedence of a motion to amend, it may be offered while an amendment is pending (V, 5328-5331). After the stage of amendment has been passed the motion to strike out the enacting words is not in order (IV, 4782). And where a special order provided that a bill should be open to amendment in Committee of the Whole, a motion to strike out the enacting words was held out of order (IV, 3215). The motion is debatable as to the merits of the bill, but may not go beyond its provisions (V, 5336). The debate on the motion is, in Committee of the Whole, governed by the five-minute rule (V, 5333-5335), and only two five-minute speeches are in order (V, 5335). A point of order against the motion should be made before debate has begun (V, 6902). When a bill is reported from the Committee of the Whole with the recommendation that the enacting words be stricken out, the motion to strike out is debatable (V, 5337-5340), but a motion to lay on the table is not in order (V, 5337). The previous question may be moved on the motion to concur without applying to further action on the bill (V, 5342). When the House disagrees to the action of the committee in striking out the enacting words and does not refer it under the provisions of the rule, it goes back to the Committee of the Whole, where it becomes unfinished business (V, 5326, 5345, 5346). When the enacting words of a bill are stricken out the bill is rejected (V, 5326), and the Senate is so informed (IV, 3423).

When, on Calendar Wednesday, the House disagrees to the recommendation of the Committee of the Whole that the enacting words be stricken out, the House automatically resolves itself into Committee of the Whole for its further consideration. (Ruled by Speaker Clark, Apr. 5, 1916, Record, 64th Cong., 1st sess., p. 5551.) When the bill is thus again taken up in

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Committee of the Whole it is taken up as unfinished business and is open to amendment, and the motion to strike out the enacting words may be again offered in the committee. (Ruled by Chairman Harrison, Apr. 5, 1916, Record, 1st sess., 64th Cong., p. 5553.)

8. The rules of proceeding in the House shall be observed in Committees of the Whole House so far as they may be applicable.

§ 855. Application of rules of the House to the Committee of the Whole.

This rule was adopted in 1789 (IV, 4737).

RULE XXIV.

ORDER OF BUSINESS.

1. The daily order of business shall be as follows:

§ 856. The rule for the order of business in the House.

First. Prayer by the Chaplain.

Second. Reading and approval of the Journal.

Third. Correction of reference of public bills.

Fourth. Disposal of business on the Speaker's table.

Fifth. Unfinished business.

Sixth. The morning hour for the consideration of bills called up by committees.

Seventh. Motions to go into Committee of the Whole House on the state of the Union.

Eighth. Orders of the day.

Originally the House had no rule prescribing an order of business, but certain simple usages were gradually established by practice before the first rule on the subject was adopted in 1811. The rule was amended frequently in an endeavor so to arrange the business as to give the House as large a freedom as possible in selecting for consideration and completing the consideration of the bills which it deems of the most importance. The present form was finally perfected in 1890 (IV, 3056).

This rule does not, however, bind the House to a daily routine, since the system of making certain important subjects privileged (see Rules XI, § 56; XVI, § 9; XXVIII) permits the interruption of the order of business by matters which, in fact, often supplant it entirely for days at a time. But on any day, when the order of business is inter-

§ 857. Privileged interruptions of the order of business in the House.

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rupted by a privileged matter, the business in order goes on from the place of interruption (IV, 3070, 3071) unless the House adjourn. After an adjournment the House begins again at the beginning. While privileged matters may interrupt the order of business, they may do so only with the consent of a majority of the House, expressed as to appropriation bills by the vote on going into Committee of the Whole to consider such bills, and as to matters like conference reports, questions of privilege, etc., by raising and voting on the question of consideration. The only exception to the principle that a majority may prevent interruption is contained in Rule XXIV, paragraph 7, providing for a call of committees on Wednesdays. By this combination of an order of business with privileged interruptions the House is enabled to give precedence to its most important business without at the same time losing the power by majority vote to go to any other bills on its calendars.

The privileged matters which may interrupt the order of business are, in their order of frequency, as follows:

§ 858. The privileged matters which may interrupt the order of business.

(1) General appropriation and revenue bills (Rule XVI, § 9; IV, 3072).

(2) Conference reports (Rule XXVIII, § 1; V, 6443).

(3) Special orders reported by the Committee on Rules for consideration by the House (Rule XI, § 45; IV, 3070-3076, 4621).

(4) Consideration of amendments between the Houses after disagreement (IV, 3149, 3150).

(5) Questions of privilege (Rule IX; III, 2521).

(6) Privileged bills reported under the right to report at any time (Rule XI, § 45; IV, 3142-3144, 4621; Rule XXII, 5).

(7) Call of committees on Wednesdays for bills on House and Union Calendars (Rule XXIV, § 7).

(8) Private business on Fridays (Rule XXIV, § 6; IV, 3266, 3267).

(9) District of Columbia business on the second and fourth Mondays of the month (Rule XXIV, § 8; IV, 3304).

(10) Motions on the first and third Mondays of the month to consider motions to instruct committees to report public bills and resolutions (Rule XXVII, § 4), to take up bills by unanimous consent (Rule XIII, § 3), and to suspend the rules and pass bills out of the regular order (Rule XXVII, § 1; V, 6790).

(11) Bills coming over from a previous day with the previous question ordered (V, 5510-5517).

(12) Bills returned with the objections of the President (IV, 3534-3536).

In addition to these matters, the House by practice permits its order of business to be interrupted, at the discretion of the Speaker, for the reception of messages (V, 6602). Requests of Members for leaves of absence are in practice put before the House at the time of adjournment (IV, 3151).

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§ 859. The interruption of the order of business by the request for unanimous consent.

When the House has no rule establishing an order of business, as at the beginning of a session before the adoption of rules, it is in order for any Member who is recognized by the Chair to offer a proposition without asking consent of the House (IV, 3060). But after the adoption of the rule for the order of business, interruptions are confined to matters privileged to interrupt or to cases wherein the House gives unanimous consent for an interruption. A request for unanimous consent to consider a bill is in effect a request to suspend the order of business temporarily (IV, 3059). Therefore any Member, and the Speaker is, of course, included, may object, or demand the "regular order" (IV, 3058). The Speaker, however, usually signifies his objection by declining to put the request of the Member, thus saving the time of the House. The request for unanimous consent began to be used about 1832 when the House first felt a pressure of business and the necessity of adhering to a fixed order (IV, 3155-3159). In 1909, by the adoption of clause 3 of Rule XIII, a Consent Calendar was established.

§ 860. Disposal of business on the Speaker's table.

2. Business on the Speaker's table shall be disposed of as follows:

Messages from the President shall be referred to the appropriate committees without debate. Reports and communications from heads of departments, and other communications addressed to the House, and bills, resolutions, and messages from the Senate may be referred to the appropriate committees in the same manner and with the same right of correction as public bills presented by Members; but House bills with Senate amendments which do not require consideration in a Committee of the Whole may be at once disposed of as the House may determine, as may also Senate bills substantially the same as House bills already favorably reported by a committee of the House, and not required to be considered in Committee of the Whole, be disposed of in the same

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manner on motion directed to be made by such committee.

A rule to govern disposition of business on the Speaker's table (to be distinguished from the table of the House, which is the Clerk's table) was adopted in 1832. In 1880 and 1885 efforts were made to so modify the rule as to prevent delays in business on the Speaker's table, but it was not until 1890 that the present rule was adopted (IV, 3089).

Such portions of messages from the Senate as require action by the House,

§ 861. Matters on Speaker's table for action by the House or by the Speaker alone.

all messages from the President except those transmitting his objections to bills (IV, 3534-3536), and all communications and reports from the heads of departments go to the Speaker's table when received, to be disposed of under this rule. All of the President's messages and

such portions of Senate messages as, being House bills with Senate amendments, do not require consideration in Committee of the Whole are laid before the House for action; but communications other than messages from the President, all portions of Senate messages requiring consideration in Committee of the Whole (IV, 3101), and Senate bills of all kinds (with the exception noted in the rule) are referred to the appropriate standing committees under direction of the Speaker without action by the House (IV, 3107, 3111). A House bill returned with Senate amendments involving a new matter of appropriation, whether with or without a request for a conference, is referred directly to a standing committee, and on being reported therefrom is referred directly to the Committee of the Whole (IV, 3094, 3095, 3108-3110). A Senate bill to come before the House directly from the table must conform to the conditions prescribed by the rule (IV, 3098, 3099), and must have come to the House after and not before the House bill "substantially the same" has been placed on the House Calendar (IV, 3096). In the event the House bill has passed before the Senate bill is received, the Senate bill may nevertheless be disposed of on motion directed by the committee. (Speaker Longworth, Mar. 16, 1926, 69th Cong., 1st sess., p. 5749.) The House bill must be correctly on the House Calendar. In determining whether the House bill is substantially the same as the Senate bill, amendments recommended by the House committee must be considered. (Speaker Clark, Aug. 9, 1912, 2d sess. 62d Cong., p. 10605.) The rule applies to private as well as to public Senate bills (IV, 3101), and to concurrent resolutions as well as to bills (IV, 3097). Although a committee must authorize the calling up of the Senate bill, the actual motion need not be made by one of the committee (IV, 3100). The authority of a committee to call up a bill must be given at a formal meeting of the committee. Speaker Clark Aug. 20, 1912, 62d Cong., 2d sess., p. 11398; also, May 17, 1918, p. 6689; Speaker Gillett, June 17, 1922, p. 8928.)

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A message of the President on the Speaker's table is regularly laid before the House only at the time prescribed by the order of § 862. Reference of President's business (V, 6635-6638). While it is always read in full messages from the and entered on the Journal and the Congressional Record Speaker's table. (V, 6963), the accompanying documents are not read on demand of a Member or entered in the Journal or Record (V, 5267-5271). The annual message of the President is usually referred to the Committee of the Whole House on the state of the Union by the House on motion (V, 6631), whence it is distributed to appropriate standing committees (V, 6621, 6622) by resolutions reported from the Committee on Ways and Means (V, 6621, 6622). But a portion of the annual message has been referred directly to a select committee (V, 6628). A message other than an annual message is usually referred directly to a standing committee by direction of the Speaker (IV, 4053), but may be referred by the House itself on motion by a Member (V, 6631). This reference may be to a select as well as to a standing committee (V, 6633, 6634).

3. The consideration of the unfinished business in which the House may be engaged at an adjournment, except business in the morning hour, shall be resumed as soon as the business on the Speaker's table is finished, and at the same time each day thereafter until disposed of, and the consideration of all other unfinished business shall be resumed whenever the class of business to which it belongs shall be in order under the rules.

The first rule relating to unfinished business was adopted in 1794. Changes were made in 1860 and 1880, but the rule finally became unsatisfactory, because of delays caused by it, and in 1890 the present form was adopted (IV, 3112).

The "business in which the House may be engaged at an adjournment" means, literally, business in the House, as distinguished from the Committee of the Whole; and it further means business in which the House is engaged in its general legislative time, as distinguished from the special periods set aside for classes of business, like the morning hour for calls of committees, Fridays for private bills, etc. In general, all business unfinished in the general legislative time goes over as unfinished business under the rule, but there are a few exceptions. Thus, a motion relating to the order

§ 864. Construction of rule as to unfinished business.

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of business does not recur as unfinished business on a succeeding day, even though the yeas and nays may have been ordered on it (IV, 3114). The question of consideration also, when not disposed of at an adjournment, does not recur as unfinished business on a succeeding day (V, 4947, 4948).

When the House adjourns before voting on a proposition on which the previous question has been ordered, either directly or by the terms of a special order (IV, 3185), the question comes up the next day immediately after the reading of the Journal, regardless of the requirements of the rule for the order of business (V, 5510-5517). If several bills come over in this situation, they have precedence in the order in which the several motions for the previous question were made (V, 5518). When the previous question is ordered on a bill undisposed of at adjournment on Friday, the bill comes up for disposition on the next legislative day (Speaker Clark, Jan. 11, 1913, 62d Cong., 3d sess., p. 1405). A bill going over from Calendar Wednesday with the previous question ordered on it should be disposed of on the next legislative day (Speaker Clark, Feb. 20, 1914, p. 3726), but when the previous question is ordered on a bill undisposed of when the House adjourns Tuesday, the bill goes over until Thursday (Feb. 20, 1912, p. 2292). A bill coming over from a preceding day with the previous question ordered is of equal privilege with business on the Consent Calendar (Speaker Gillett, Feb. 19, 1923, 67th Cong., 4th sess., p. 4009).

The rule excepts by its terms certain classes of business which are considered in periods set apart for classes of business, viz:

§ 865. Business unfinished in periods set apart for classes of business.

(a) Bills considered in the morning hour and on Calendar Wednesday for the call of committees.

(b) Bills in Committee of the Whole.

(c) Private bills considered on Fridays.

(d) District of Columbia bills.

(e) Bills brought up under the rule setting apart days for motions to suspend the rules, the Consent Calendar, motions to discharge committees, and bills under consideration after a committee has been discharged.

A bill brought up in the morning hour and undisposed of when the call ceases for the day remains as unfinished business in the morning hour (IV, 3113, 3120), i. e., it is considered when the House next goes to a call of committees. Business unfinished when the Committee of the Whole rises remains unfinished, to be considered first in order when the House next goes into Committee of the Whole to consider that business (IV, 4735, 4736). Private bills unfinished on a Friday go over to the next Friday, and must be considered before the motion to go into Committee of the Whole House to consider other private bills (IV, 3276-3280). But when public business is considered on a Friday the unfinished business goes over until the next legislative day (V, 6945).

On District of Columbia day business unfinished on the preceding District day is in order for consideration, but does not come before the House unless called up (IV, 3307). A motion to suspend the rules on which a second has been ordered, and which is undisposed of on one suspension day, goes

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over as unfinished business to the next suspension day, individual motions going over to a committee day, and vice versa (V, 6814-6816). (Speaker Gillett, Oct. 7, 1919, p. 6513.) Where the second has not been ordered, there is doubt as to whether or not the motion goes over as unfinished business (IV, 6817, 6818).

4. After the unfinished business has been disposed of, the Speaker shall call each standing committee in regular order, and then select committees, and each committee when named may call up for consideration any bill reported by it on a previous day and on the House Calendar, and if the Speaker shall not complete the call of the committees before the House passes to other business, he shall resume the next call where he left off, giving preference to the last bill under consideration: *Provided*, That whenever any committee shall have occupied the morning hour on two days, it shall not be in order to call up any other bill until the other committees have been called in their turn.

The "morning hour" is one of the oldest devices of the rules for devoting an early portion of the session to a specific class of business. Until 1885 it was the hour for the reception of reports from committees. In 1890 it was provided that reports should be filed with the clerk, and the morning hour was by this rule devoted to a call of committees for the consideration of House Calendar bills (IV, 3118). Since the adoption of the Calendar Wednesday rule (clause 7, Rule XXIV), the "morning hour" has been used but a very few times.

Originally the morning hour was a fixed period of sixty minutes (IV, 3118); but under the present rules (Rule XXIV, § 4) it does not terminate until the call is exhausted or until the House adjourns (IV, 3119), unless the House on motion made at the end of sixty minutes votes to go into Committee of the Whole House on the state of the Union (Rule XXIV, § 5; IV, 3134), or unless other privileged matter intervenes (IV, 3131, 3132). Before the expiration of the sixty minutes the Speaker has declined to permit the call to be interrupted by a privileged report (IV, 3132) or by unanimous consent (IV, 3130). Where the business for which the call is interrupted is concluded, the call is resumed unless there be other interrupting business

§ 867. Procedure in the morning hour.

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§§ 868, 869

or the House adjourns (IV, 3133). A bill once brought up on the call continues before the House in that order of business until disposed of (IV, 3120), unless withdrawn by authority of the committee before action which puts it in possession of the House (IV, 3129); and may not be made a special order for a future day by a motion to postpone to a day certain (IV, 3164). In order to be called up in this order a bill must actually be on the House Calendar, and properly there, in order to be considered (IV, 3122-3126). In case the authority of the committee to call up a bill is disputed the Speaker does not consider it his duty to decide the question (IV, 3127), but has made decision on statements from the chairman and other members of the committee (IV, 3128).

5. After one hour shall have been devoted to the consideration of bills called up by committees, it shall be in order, pending consideration or discussion thereof, to entertain a motion to go into Committee of the Whole House on the state of the Union, or, when authorized by a committee, to go into the Committee of the Whole House on the state of the Union to consider a particular bill, to which motion one amendment only, designating another bill, may be made; and if either motion be determined in the negative, it shall not be in order to make either motion again until the disposal of the matter under consideration or discussion.

This rule was adopted in 1890 as part of the plan for enabling the House at will to go at any time to any public bill on its calendars (IV, 3134).

The words of the rule "after one hour" have been interpreted to mean a less time in case the call of committees shall have exhausted itself before the expiration of one hour (IV, 3135); but not otherwise (IV, 3141). After the House has been in Committee of the Whole under this order and has risen and reported, and the report has been acted on by the House, other motions to go into committee to consider other bills are in order (IV, 3136). The motion to go into committee generally may be made by the individual Member (IV, 3138), but when it is proposed to designate a particular bill he must have the authority of a committee (IV, 3138). The amendment to the motion to consider a par-

§ 868. Interruption of the call of committees by motion to go into Committee of the Whole House on the state of the Union.

§ 869. Conditions of the motion to go into Committee of the Whole at the end of one hour.

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§§ 870, 871.

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ticular bill must refer to a bill on the Union Calendar (IV, 3139). This order of business is not used in the House for consideration of bills in Committee of the Whole House on the state of the Union like general appropriation and revenue bills, which are very highly privileged (IV, 3072) and bills reported under the leave to report at any time, which have a privilege of somewhat inferior grade (IV, 3086); but is used entirely for nonprivileged bills.

6. On Friday of each week, after the disposal of such business on the Speaker's table as requires reference only, it shall be in order to entertain a motion for the House to resolve itself into Committee of the Whole House to consider business on the Private Calendar in the following order: On the second and fourth Fridays of each month preference shall be given to the consideration of private pension claims and bills removing political disabilities and bills removing the charge of desertion. On every Friday except the second and fourth Fridays the House shall give preference to the consideration of bills reported from the Committee on Claims and the Committee on War Claims, alternating between the two committees.

This rule was adopted in the Sixty-second Congress in lieu of special orders under which pension and private business formerly had been considered. The rule does not interfere with the highly privileged motion to go into Committee of the Whole House on the state of the Union to consider revenue or appropriation bills (Rule XVI, § 9), which may be made immediately after the reading of the Journal on Fridays as on other days (IV, 3081), and at any time of the day takes precedence over the motion to go into the Committee of the Whole House to consider the Private Calendar (IV, 3082-3085). (Speaker Clark, Mar. 6, 1914, p. 4429.) When the House by special order devotes Friday entirely to business other than private business the special rules governing the use of the day are thereby suspended (IV, 3282), and even a special order providing for the considera-

§ 870. Interruption of the regular order on Fridays for consideration of the Private Calendar.

§ 871. Friday as a day for private business.

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tion of a bill from day to day until disposed of includes Friday unless special exception be made (IV, 3201, 3202).

The House may "otherwise determine" as to business on Friday by voting in the House itself (as distinguished from the Whole House) on a motion to lay aside private business (IV, 3270-3272), or by voting down the motion to go into Committee of the Whole House (IV, 3267), or by voting affirmatively on the privileged motion to go into Committee of the Whole House on the state of the Union to consider revenue or general appropriation bills (IV, 3081), or bills reported under leave to report at any time. (Speaker pro tempore Walsh, June 21, 1921, 67th Cong., 1st sess., p. 2858.)

Under this rule the unfinished private business must be considered before a motion to go into Committee of the Whole House is in order (IV, 3276-3280). When the House elects to devote a Friday belonging to one claims committee to public business, the claims committee entitled to that day does not thereby lose its rights over the other claims committee. (Speaker Clark, Mar. 6, 1914, p. 4429.)

§ 873. Precedence of the several classes of bills on Friday.

In the absence of a motion establishing an order of business on Friday, bills on the Private Calendar are considered in regular order. A motion establishing an order of business in the Committee of the Whole House is in order, and a motion to consider a particular bill or class of bills given preference for the day by the rule is preferential over a motion to consider bills not given preference on that day. To the motion to consider a particular bill one amendment only, designating another bill, may be made. (Chairman Tilson, Feb. 18, 1921, 66th Cong., 3d sess., p. 3414. For another interpretation of this rule, see rulings by Chairman Adair, Feb. 6, 1914, 63d Cong., 2d sess., p. 3053, and Chairman Hamlin, 62d Cong., 2d sess., p. 6278.) Under the practice, after consideration of a bill in committee is completed a motion to lay the bill aside to be reported to the House later with a recommendation is in order.

7. On Wednesday of each week no business shall

§ 874. Calendar Wednesday business.

be in order except as provided by paragraph 4 of this rule unless the House by a two-thirds vote on motion to dispense therewith shall otherwise determine. On such a motion there may be debate not to exceed five minutes for and against. On a call of committees under this rule bills may be called up from either the House or the Union Calendar, excepting bills which are privileged under the rules; but bills called up from the Union Calendar shall be considered in Committee of the Whole House on the state of the Union. This rule shall not apply during the last

two weeks of the session. It shall not be in order for the Speaker to entertain a motion for a recess on any Wednesday except during the last two weeks of the session.

Provided, That not more than two hours of general debate shall be permitted on any measure called up on Calendar Wednesday, and all debate must be confined to the subject matter of the bill, the time to be equally divided between those for and against the bill: *Provided further*, That whenever any committee shall have occupied two Wednesdays it shall not be in order, unless the House by a two-thirds vote shall otherwise determine, to consider any unfinished business previously called up by such committee, unless the previous question had been ordered thereon, upon any succeeding Wednesday until the other committees have been called in their turn under this rule.

The first paragraph of this rule was adopted March 1, 1909, and amended March 15, 1909. The second paragraph was adopted January 18, 1916. The rule applies to unprivileged bills only, and when a bill otherwise unprivileged is given a privileged status by unanimous consent or by rule it is automatically rendered ineligible for consideration on Calendar Wednesday. (Speaker Clark, June 18, 1918, p. 7986.) House Calendar bills have no preference over Union Calendar bills. (Dec. 15, 1909, pp. 161-162.)

When a bill on the Union Calendar is called up on Calendar Wednesday the House automatically resolves itself into the Committee of the Whole House on the state of the Union, (Speaker Cannon, Dec. 15, 1909, p. 162), and when a Union Calendar bill is the unfinished business the Speaker declares the House in Committee of the Whole without motion (Jan. 5, 1910, p. 326).

The question of consideration may be raised on a bill on the House Calendar on Calendar Wednesday, even after one Wednesday has been devoted to its consideration (Speaker Cannon, 61st Cong., 3d sess., p. 294), and the question of consideration may be raised in the Committee of the Whole House on the state of the Union after the House has automatically resolved itself into the Committee of the Whole to consider a bill on the Union Calendar, but it is for the House to approve or reject the recommendation of the committee. (Speaker Clark, Apr. 22, 1914, p. 7100; Speaker Gillett, Oct. 1, 1919, p. 6212.)

During the Sixty-first and Sixty-second Congresses it was held that the call of committees rested where the call left off on the preceding day,

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whether the last call was on a Wednesday or during the morning hour on another day, thus making but one committee call under the two rules. But under the later practice there have been two distinct calls of committees, one under clause 4 of Rule XXIV, the morning hour, and another under clause 7 of Rule XXIV, Calendar Wednesday. Prior to the adoption of the second paragraph of the rule, it was held that one committee could not occupy more than two Calendar Wednesdays (except for unfinished business) until other committees were called, notwithstanding the fact that the call rested on said committee (Speaker Clark, Jan. 24, 1912, p. 1269), but the adoption of the second paragraph of the rule has defined the status of debate and unfinished business more explicitly. It was formerly held that a bill undisposed of on Calendar Wednesday became the unfinished business on the following Calendar Wednesdays (Speaker Clark, 62d Cong., 1st sess., p. 3819), but since the adoption of the second paragraph of the rule, one committee can occupy but two Calendar Wednesdays for the consideration of new business or the unfinished business (unless the House by two-thirds vote shall otherwise determine).

The same rule of debate applies to House Calendar bills called up on Calendar Wednesday as on other days, and the Member in charge of the bill may move the previous question at any time. (Speaker Gillett, Apr. 21, 1920, p. 5946.)

The previous question having been ordered on a bill undisposed of when the House adjourns Tuesday, the bill goes over as unfinished business until Thursday, and is not in order for consideration on Calendar Wednesday. (Feb. 20, 1912, 62d Cong., 2d sess., p. 2292.) The previous question having been ordered on a bill on Calendar Wednesday, the bill becomes the unfinished business on Thursday. (Speaker Clark, Feb. 20, 1914, p. 3726.)

It is in order to consider a vetoed bill on Calendar Wednesday, since such a question is privileged under the Constitution of the United States (Speaker Clark, Aug. 14, 1912, p. 10936), but a bill privileged by reason of the rules of the House can not be called up on Calendar Wednesday (Apr. 13, 1910, 61st Cong., 2d sess., p. 4632); for example, a general appropriation bill (Jan. 16, 1911, 61st Cong., 3d sess., p. 965) or a bill under consideration by reason of a special order, unless the special order expressly sets aside Calendar Wednesday (June 8, 1910, 61st Cong., 2d sess., p. 7603) or a conference report (Feb. 9, 1910, 61st Cong., 2d sess., p. 1650). A motion to reconsider an action taken on a bill on Tuesday may be entered, but may not be considered on Calendar Wednesday. (Speaker Gillett, May 4, 1921, p. 1032.) Privileged bills may be reported but not considered on Calendar Wednesday (July 6, 1921, p. 3384). District of Columbia business is eligible for consideration on Calendar Wednesday (Feb. 15, 1922, p. 2613).

The Committee on Rules can not report a rule which is aimed strictly or directly toward setting aside Calendar Wednesday, but the committee is not thereby prevented from reporting a resolution couched in general terms which may indirectly accomplish that ultimate result, such as a resolution providing for six days' suspension of the rules. (Speaker Gillett, May 29, 1920, 66th Cong., 2d sess., p. 7923.)

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§§ 876, 877.

Rule XXV.

A motion to grant one committee more than two Wednesdays, under the second proviso of the rule, may be made at any time and need not be withheld until the committee has consumed the entire two days allowed under the rule. (Speaker Clark, Jan. 26, 1916, Record, 64th Cong., 1st sess., p. 1608.)

It has been held that if no Member opposed to the bill desires to claim the hour specified in the rule for general debate against the bill, the time may be claimed by some Member who is in favor of the bill (Chairman Garrett, Feb. 9, 1916, Record, 64th Cong., 1st sess., p. 2356), but this principle has been questioned (Chairman Chindblom, Apr. 16, 1924, p. 6478).

Authority to call up a bill on Calendar Wednesday must have been given by a committee, and a Member not authorized to do so may not call up such bill (IV, 3127, 3128, Dec. 15, 1920, p. 397).

8. The second and fourth Mondays in each month, after the disposal of such business on the Speaker's table as requires reference only, shall, when claimed by the Committee on the District of Columbia, be set apart for the consideration of such business as may be presented by said committee.

The first rule giving a fixed day for District of Columbia business was adopted in 1870. In 1890 the rule was given its present form (IV, 3304).

The Committee on the District of Columbia may not, on a District day, call up a bill reported from another committee (IV, 3311). If certain of the committee's bills are on one of the calendars of the Committees of the Whole, a motion to go into committee to consider them is in order (IV, 3310). Business unfinished on one District day does not come up on the next unless called up (IV, 3307). The question of consideration may not be demanded against District business generally, but may be demanded against any bill as it is presented (IV, 3308, 3309).

On District days it is in order to go into the Committee of the Whole to consider revenue or general appropriation bills. (Cong. Record, 61st Cong., 3d sess., p. 2429).

RULE XXV.

PRIORITY OF BUSINESS.

§ 877. Decision of questions as to priority of business without debate.

All questions relating to the priority of business shall be decided by a majority without debate.

This rule was adopted in 1803 to prevent obstructive debate (IV, 3061). It has been held that appeals from decisions of the Chair as to priority of business are not debatable under this rule (V, 6952).

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§§ 878, 879.

RULE XXVI.

UNFINISHED BUSINESS OF THE SESSION.

All business before committees of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

§ 878. Resumption of business of a preceding session.

At first the Congress attempted to follow the rule of the English Parliament that business unfinished in one session should begin anew at the next; but in 1818, after an investigation of a joint committee in 1816, a rule was adopted that House bills remaining undetermined in the House should be continued at the next session after six days. This rule did not reach House bills sent to the Senate; but in 1848 the two Houses remedied this omission by a joint rule. Business referred to committees of the House was still subject to the old rule of Parliament; but in 1860 the present rule was adopted as a supplement to the rule of 1818. In 1890, desiring to do away with the limitation of the six days and apparently overlooking the main purpose of the rule of 1818, the House rescinded that portion of this rule which dated from 1818. Also, in 1876 the joint rules were abrogated, leaving no provision, except the headline of the rule, for the continuance of business not before committees. The practice, however, had become so well established that no question has ever been raised (V, 6727).

The business of conferences between the two Houses is not interrupted by an adjournment of a session which does not terminate the Congress (V, 6260-6262), and even where one House asks a conference at one session the other may agree to it in the next session (V, 6286). Where bills were enrolled and signed by the presiding officers of the two Houses at the close of one session they were sent to the President and approved at the beginning of the next session (IV, 3486-3488).

RULE XXVII.

CHANGE OR SUSPENSION OF RULES.

1. No rule shall be suspended except by a vote of two-thirds of the Members voting, a quorum being present; nor shall the Speaker entertain a motion to suspend the rules except on the first and third Mondays of each

§ 879. Motions to suspend the rules.

month, preference being given on the first Monday to individuals and on the third Monday to committees, and during the last six days of a session.

This rule has been built up gradually on an old rule of 1794, which provided that no rule should be rescinded without one day's notice. In 1822 a clause was added that no rule should be suspended except by a two-thirds vote; and in 1828 it was provided that the "order of business, as established by the rules," should not be changed except by a two-thirds vote. This rule marks the great purpose of the motion, which was to give a means of getting consideration for bills which could not get forward under the rule for the order of business. Originally in order on any day, the motion was, in 1847, restricted to Mondays of each week, and, in 1880, to the first and third Mondays of each month. In 1874 the old limit of 10 days at the end of the session was reduced to 6 days. Originally of great use, when the older and more defective rules for the order of business existed, this motion has ceased to be necessary, since the House in 1890 adopted rules for the order of business which enables the House on any day to go to any public bills on its calendars. Also about the same time the perfection of the process of getting bills before the House out of order by a majority vote through a report from the Committee on Rules still further diminished the importance of the motion to suspend the rules (V, 6790).

While originally the motion was used to suspend the rule for the order of business in order to consider a particular bill (V, 6852, 6853), in the later practice it is more usual to move "to suspend the rules and pass" the bill (V, 6846, 6847), and a division of the question may not be demanded, either as to the two branches of the motion or as to distinct substantive propositions in the subject of the motion (V, 6141-6143). The motion may not be amended (V, 5322, 5405, 6858), postponed (V, 5322), or laid on the table (V, 5405), and the motion to reconsider may not be applied to the vote on the motion (V, 5645, 5646). The motion to refer may not be applied to the bill which it is proposed to pass under suspension of the rules (V, 6860). The motion to suspend the rules applies to the parliamentary law of Jefferson's Manual as well as to the other rules of the House (V, 6796), and may even be used to deny the right to have read a paper on which the House is to vote (V, 5278-5284). But it has usually been held that the right of the Member to have read the paper on which he is called to vote is not changed by the fact that the procedure is by suspension of the rules (V, 5273-5277). The motion is held to suspend all rules inconsistent with its purposes, including a rule requiring a recess to be taken (V, 5752). It may be used also to change a rule (V, 6862), or to make a new rule, as was more frequently done in the earlier years of the House

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when it was the only way for making a special order except by unanimous consent (3152-3162). In the later practice special orders may still be made on motion to suspend the rules (IV, 3154); but usually they are made by majority vote of the House on a report from the Committee on Rules (IV, 3169). The motion to suspend may include a series of actions, as the discharge of a committee from consideration of a bill and the passage of it (V, 6850), the reconsideration of the vote passing a bill, amendment of it, and passage again (V, 6849), the permission to a committee to report several bills (V, 6857), an order to the Clerk to incorporate in the engrossment of a general appropriation bill a provision not otherwise in order (IV, 3845), an authorization to the House to entertain a specified motion to suspend the rules on a future day, not a suspension day (IV, 3845), a motion to take a bill (V, 6288), or a motion to reconsider, from the table (V, 5640).

In the early practice, when the motion to suspend the rules was used to enable a matter to be taken up for consideration out of order, it was not admitted when a subject was already before the House (V, 5278, 6836, 6837, 6852, 6853). A bill taken up under this early practice might be amended (V, 6842, 6856) by the House, or withdrawn by the mover, in which case another Member might not present it (V, 6854, 6855). In the later practice, where the motion includes both suspension of the rules and action on the subject it is admitted, although another matter be pending (V, 6834), although the yeas and nays may have been demanded on another highly privileged motion (V, 6835), or although the previous question may have been ordered or moved on another matter (V, 6827, 6831-6833). Earlier rulings, however, did not, while a series of Senate amendments were pending, permit a motion to suspend the rules in order to permit a vote to be taken on the amendments in gross (V, 6828, 6830). But in the earlier practice, also, while a matter was pending a motion to suspend the rules in order to dispense with the reading otherwise required was admitted (V, 5278). The motion to suspend the rules has been ruled out of order when the House is considering a bill under a special order (V, 6838); and when a question of high privilege is before the House a motion to suspend the rules and consider another matter is not in order (V, 6825, 6826). A motion to suspend the rules and approve the Journal was held in order, although the Journal had not been read and the then highly privileged motion to fix the day to which the House should adjourn was pending (IV, 2758). While the motion is of high privilege, it may be superseded by a question of the privilege of the House (III, 2553). Moreover, in the absence of a motion to suspend, the ordinary motions relating to business of the House may be made on suspension days as on other days (IV, 3080). The motion to suspend the rules may be made on days other than suspension days only by unanimous consent (V, 6795).

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On "suspension days" the motion to suspend the rules has been admitted at the discretion of the Speaker since 1881 (V, 6791-6794, 6845); but the rules forbid the Speaker to entertain a motion to suspend the rules relating to the privilege of the floor (V, 7283) and the use of the Hall of the House (V, 7270).

The rule gives to individuals preference on the first Monday of the month for making motions to suspend the rules, and preference for committees to make the motion on the third Mondays (V, 6790). In rare instances the Speaker has called the committees in regular order for motions to suspend the rules, but this method is not required (V, 6810, 6811). The committee motion must be formally and specifically authorized by the committee (V, 6805-6807); but after the motion has been seconded and debate has begun it is too late to raise a question as to the authorization (V, 6808). The committee may not present a bill which has not been referred to it (V, 6813) and is not within its jurisdiction (V, 6848). A bill offered on a committee suspension day may carry with it only such amendments as are authorized by a committee (V, 6812). If on a committee day an individual motion is made and seconded, it is then too late to make a point of order (V, 6809).

2. All motions to suspend the rules shall, before being submitted to the House, be seconded by a majority by tellers, if demanded.

§ 883. The second of the motion to suspend the rules.

This rule was adopted in 1874, but rescinded two years later. In 1880 it was again adopted and has been retained constantly since that time. The object of it was to prevent consumption of the time of the House by forcing consideration of undesirable propositions (V, 6797).

In voting on this second the constitutional right to demand the yeas and nays does not exist (V, 6032-6036). But where a quorum fails on the vote for a second, it has been held that, under Rule XV, § 4, the doors should be closed and the yeas and nays taken (IV, 3053-3055). While it has been held that it is the right of a Member to demand a second but not the duty of the Chair to call for it (V, 6801), it is the custom of the Speaker to ask "Is a second demanded?" (V, 6800). In demanding a second an opponent of the bill is entitled to recognition, and a member of the committee reporting the bill has the preference if he be opposed (V, 6802-6804). It has been held that the right to demand a second is not necessarily precluded by preliminary debate (V, 6800). The motion may be withdrawn (V, 6844) or modified at any time before the second has been ordered (V, 6840); and a committee may, under the same circumstances, withdraw a committee motion, even on a succeeding day (V, 6845).

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§§ 884, 884A.

3. When a motion to suspend the rules has been seconded, it shall be in order, before the final vote is taken thereon, to debate the proposition to be voted upon for forty minutes, one-half of such time to be given to debate in favor of, and one-half to debate in opposition to, such proposition; and the same right of debate shall be allowed whenever the previous question has been ordered on any proposition on which there has been no debate.

Before the adoption of the rule in 1880 (V, 6821) the motion to suspend the rules was not debatable (V, 5405, 6820). It may not be debated before a second is ordered (V, 6799), but after a second is ordered the debate is allowed even though the question would not be debatable under the other rules of the House (V, 6822). However, when the previous question is ordered without debate on a motion not debatable, no debate is allowed under this rule. (Speaker Clark, Jan. 27, 1912, 62d Cong., 2d sess., p. 1407.) The 40 minutes of debate is divided between the mover and the seconder (V, 6823, 6824), unless it develops that the mover is opposed to the bill, in which event some Member in favor is recognized for debate. (Speaker pro tempore Stafford, June 27, 1921, p. 3085.) When the mover and seconder divide their time with others, the practice as to alternation of recognitions is not insisted on so rigidly as in other debate (II, 1442).

4. A Member may present to the Clerk a motion in writing to instruct a committee to report within fifteen days a public bill or resolution which has been referred to it thirty days prior thereto (but only one motion may be presented for each bill or resolution). The motion

§ 884A. Motion to instruct a committee.

shall be placed in the custody of the Clerk, who shall arrange some convenient place for the signature of Members. A signature may be withdrawn by a Member in writing at any time before the motion is entered on the Journal. When a majority of the membership of the House shall have signed the motion it shall be entered on the Journal, printed with the signatures thereto in the Congressional Record, and referred to the Calendar of Motions to Instruct Committees.

On the third Monday of each month, immediately after the approval of the Journal, any Member who has signed a motion to instruct which has been on the Calendar at least seven days prior thereto, and seeks recognition, shall be recognized for the purpose of calling up the motion, and the House shall proceed to its consideration in the manner herein provided without intervening motion except one motion to adjourn. Recognition for the motions shall be in the order in which they have been entered.

When the motion shall be called up, the bill or resolution shall be read by title only prior to a second being ordered by tellers. After the reading of the bill by title the motion shall not be submitted to the House unless seconded by a majority of the membership of the House to be determined by tellers and

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Rule XXVIII.

§ 885.

clause 4 of Rule XV shall not apply to such second; if such motion fails of a second, it shall immediately be stricken from the Calendar and shall not be thereafter placed thereon.

If a second be ordered, debate on such motion shall be limited to forty minutes, one-half thereof in favor of the proposition and one-half in opposition thereto. Such motions shall require for their adoption an affirmative vote of a majority of the membership of the House. Whenever such motion shall prevail the committee shall report said bill or resolution to the House within fifteen days thereafter and said bill or resolution shall be referred to its appropriate Calendar.

This clause was adopted December 7, 1925, and displaced a rule providing for the discharge of a committee from the consideration of a public bill or resolution. The first discharge rule was adopted June 17, 1910. It was amended during the first session of the Sixty-second Congress and also on February 3, 1912, and on January 18, 1924.

RULE XXVIII.

CONFERENCE REPORTS.

- 1a. The presentation of reports of committees of conference shall always be in order, except when the Journal is being read, while the roll is being called, or the House is dividing on any proposition.
- § 885. High privilege of conference reports; and form of accompanying statement.

The practice of giving conference reports privilege dates from 1850, having had its origin in a temporary rule. This practice was continued by rulings of the Chair until this rule was adopted in 1880 (V, 6443-6446, 6454).

Under the language of the rule a conference report may be presented while a Member is occupying the floor in debate (V, 6451), while a bill is being read (V, 6448), after the yeas and nays have been ordered (V, 6457), after the previous question has been demanded or ordered (V, 6449, 6450), and during a call of the House if a quorum be present (V, 6456). It even takes precedence of the motion to reconsider (V, 5605) and to adjourn (V, 6451-6453), although as soon as the report is presented the motion to adjourn may be put (V, 6451-6453). Also the consideration of a conference report may be interrupted, even in the midst of the reading of the statement, by the arrival of the hour previously fixed for a recess (V, 6524). While it may not be presented while the House is dividing, it may be presented after a vote by tellers and pending the question of ordering the yeas and nays (V, 6447). It also has precedence of a report from the Committee on Rules (V, 6449), and has been permitted to intervene when a special order provides that the House shall consider a certain bill "until the same is disposed of" (V, 6454). Of course, a question of privilege which relates to the integrity of the House as an agency for action may not be required to yield precedence to a matter entitled to priority merely by the rules relating to the order of business (V, 6454).

While the rule provides that the managers of the House asking a conference shall leave the papers with the managers of the other (secs. 548, 549), if the managers on the part of the House agreeing to a conference surrender the papers to the House asking the conference, the report may be received first by the House asking the conference. (Speaker Clark, 62d Cong., 1st sess., p. 3872.) The conferees are limited to the differences between the two Houses and can not insert in their report new matter not germane thereto (for complete decisions, see secs. 942-946), but where an amendment strikes out all after the enacting clause of a bill, the conferees have the entire subject before them. (Speaker Clark, Aug. 14, 1911, 62d Cong., 1st sess., p. 3913.)

For further discussion of conference reports, see sections 520-552, Jefferson's Manual.

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Rule XXIX.

§§ 886-888.

1b. And there shall accompany every such report a detailed statement sufficiently explicit to inform the House what effect such amendments or propositions will have upon the measures to which they relate.

This rule was adopted in 1880 (V, 6821).

The statement required by the rule should be in writing and signed by at least a majority of the House managers (V, 6505, 6506). The Speaker may require the statement to be in proper form (V, 6513), but it is for the House and not the Speaker to determine whether or not it conforms to the rule in other respects (V, 6511, 6512). A report may not be received without the accompanying statement (V, 6504, 6514, 6515).

2. It shall not be in order to consider the report of a committee of conference until such report and the accompanying statement shall have been printed in the Record, except on either of the six days preceding the end of a session.

This rule was adopted in 1902 (V, 6516).

RULE XXIX.

SECRET SESSION.

Whenever confidential communications are received from the President of the United States, or whenever the Speaker or any Member shall inform the House that he has communications which he believes ought to be kept secret for the present, the House shall be cleared of all persons except the Members and officers thereof,

§ 888. Secret session of the House.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 889, 890.

Rule XXX.

and so continue during the reading of such communications, the debates and proceedings thereon, unless otherwise ordered by the House.

This rule, in a somewhat different form, was adopted in 1792, although secret sessions had been held by the House before that date. They continued to be held at times with considerable frequency until 1830. In 1880, at the time of the general revision of the rules, the House concluded to retain the rule, although it had been long in disuse (V, 7247).

The two Houses have legislated in secret session, transmitting their messages also in secrecy (V, 7250); but the House has declined to be bound to secrecy by act of the Senate (V, 7249). Motions to remove the injunction of secrecy should be made with closed doors (V, 7254). In 1843 a confidential message from the President was referred without reading; but no motion was made for a secret session (V, 7255).

RULE XXX.

READING OF PAPERS.

When the reading of a paper other than one upon which the House is called to give a final vote is demanded, and the same is objected to by any Member, it shall be determined without debate by a vote of the House.

§ 889. Objections to reading of papers.

This rule was adopted in 1794 and amended in 1802 and 1880 (V, 5257).

It recognizes the right of the Member under the general parliamentary

§ 890. Papers read on demand of a Member.

law to have read the paper on which the House is to vote (V, 5258), but when that paper has been read once, the reading may not be repeated unless by order of the House (V, 5260). The right may be abrogated

by suspension of the rules (V, 5278-5284); but is not abrogated simply by the fact that the current procedure is taking place under the rule for suspension (V, 5273-5277). On a motion to refer a report the reading of it may be demanded as a matter of right, but the latest ruling leaves to the House to determine whether or not an accompanying record of testimony

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XXXI.

§§ 891, 892.

should be read (V, 5261, 5262). In general the reading of a report is held to be in the nature of debate (V, 5292); but where a report presents facts and conclusions but no legislative proposition it is read if submitted for action (IV, 4663). Where a paper is offered as involving a matter of privilege it should be read to the House (III, 2597) rather than by the Speaker privately (III, 2546), but a Member may not, as a matter of right, require the reading of a book or paper on suggestion that it contains matter infringing on the privileges of the House (V, 5258).

The reading of papers other than the one on which the vote is about to be taken is usually permitted without question (V, 5258), and the Member in debate usually reads or has read such papers as he pleases, but this privilege is subject to the authority of the House if another Member objects (V, 5285-5288, 5289-5291). (Chairman Garner, Feb. 20, 1919, p. 3892.) This principle applies even to the Member's own written speech (V, 5258), or a report which he proposes to have read in his own time or to read in his place (V, 5293). But, on a motion to lay on the table, a demand for the reading of a paper other than the one to which the motion applied was overruled (V, 5297); and after the previous question is ordered a Member may not ask the decision of the House as to the reading of a paper not before the House for action (V, 5296), even though it be the report of the committee (V, 5294, 5295). (See secs. 425-429 for further discussion.)

§ 891. Papers
read by consent
of the House.

RULE XXXI.

DRAWING OF SEATS.

[1. At the commencement of each Congress, immediately after the Members and Delegates are sworn in, the Clerk shall place in a box, prepared for that purpose, a number of small balls, of marble or other material, equal to the number of Members and Delegates, which balls shall be consecutively numbered and thoroughly intermingled, and at such hour as shall be fixed by the House for

§ 892. Selection
of seats by lot.

RULES OF THE HOUSE OF REPRESENTATIVES.

§ 898.

Rule XXXII.

that purpose, by the hands of a page, draw said balls one by one from the box and announce the number as it is drawn, upon which announcement the Member or Delegate whose name on a numbered alphabetical list shall correspond with the number on the ball shall advance and choose his seat for the term for which he is elected.

2. Before said drawing shall commence each seat shall be vacated and so remain until selected under this rule, and any seat having been selected shall be deemed forfeited if left unoccupied before the call of the roll is finished; and whenever the seats of Members and Delegates shall have been drawn, no proposition for a second drawing shall be in order during that Congress.]

This rule was omitted in the adoption of rules at the beginning of the Sixty-third Congress. Under the new seating arrangement in the House, Members are not assigned to particular seats.

Originally Members selected their seats by mutual agreement; but in 1845 a rule was adopted providing for selection by lot. This method was perfected by amendments in 1872 and 1880 (I, 119).

RULE XXXII.

HALL OF THE HOUSE.

The Hall of the House shall be used only for the legislative business of the House and for the caucus meetings of its Members, except upon occasions where the House by resolution

§ 898. Use of the
Hall of the House.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XXXIII.

§ 894.

agree to take part in any ceremonies to be observed therein; and the Speaker shall not entertain a motion for the suspension of this rule.

Rules relating to the use of the Hall were adopted as early as 1804. The present form of the rule dates from 1880 (V, 7270).

RULE XXXIII.

OF ADMISSION TO THE FLOOR.

1. The persons hereinafter named, and none other, shall be admitted to the Hall of the House or rooms leading thereto, viz: The President and Vice-President of the United States and their private secretaries, judges of the Supreme Court, Members of Congress and Members-elect, contestants in election cases during the pendency of their cases in the House, the Secretary and Sergeant-at-Arms of the Senate, heads of departments, foreign ministers, governors of States, the Superintendent of the Capitol Building and Grounds, the Librarian of Congress and his assistant in charge of the Law Library, the Resident Commissioner to the United States from Porto Rico, the Resident Commissioners from the Philippine Islands, such persons as have, by name, received the thanks of Congress, ex-Members of the House of Representatives who are not interested in any claim or directly in any bill pending before Congress, and clerks of committees when business from their committee is under consideration; and it shall not be in order for the

§ 894. Persons and officials admitted to the floor during sessions of the House.

Speaker to entertain a request for the suspension of this rule or to present from the chair the request of any Member for unanimous consent.

This rule, which has been amended only slightly since 1880, was subjected to many changes from 1802 until that date (V, 7283).

The portion of the rule forbidding the Speaker to entertain requests for suspension of the rule applies also to the Chairman of the Committee of the Whole (V, 7284). "Heads of departments" means members of the President's Cabinet, and not subordinate executive officers, and "foreign ministers" means ministers from foreign governments only. "Governors of States" does not include governors of Territories (V, 7283).

An alleged violation of the rule relating to admission to the floor presents a question of privilege (III, 2624, 2625), but not a higher question of privilege than an election case (III, 2626). In one case where an ex-Member was abusing the privilege, he was excluded by direction of the Speaker (V, 7288), but in another case the Speaker declared it a matter for the House and not the Chair to consider (V, 7286). In one case an alleged abuse was inquired into by a select committee (V, 7287).

2. There shall be excluded at all times from the Hall of the House of Representatives and the cloakrooms all persons not entitled to the privilege of the floor during the session, except that until fifteen minutes of the hour of the meeting of the House persons employed in its service, accredited members of the press entitled to admission to the press gallery, and other persons on request of Members, by card or in writing, may be admitted.

§ 896. Admission to the floor when the House is not sitting.

This rule was adopted in 1902 (V, 7346).

RULE XXXIV.

OF ADMISSION TO THE GALLERIES.

The Speaker shall set aside a portion of the west gallery for the use of the President of the United States, the members of his Cabinet, justices of the Supreme Court, foreign ministers and suites, and the members of their respective families, and shall also set aside another portion of the same gallery for the accommodation of persons to be admitted on the card of Members. The southerly half of the east gallery shall be assigned exclusively for the use of the families of Members of Congress, in which the Speaker shall control one bench, and on request of a Member the Speaker shall issue a card of admission to his family, which shall include their visitors, and no other person shall be admitted to this section.

§ 897. The various galleries and admission thereto.

This rule was adopted in 1880 (V, 7302).

On special occasions the House sometimes makes a special rule for admission to the galleries (V, 7303), as on the occasion of the electoral count (III, 1961), of address by the President, and of public funerals.

RULE XXXV.

OFFICIAL AND OTHER REPORTERS.

1. The appointment and removal, for cause, of the official reporters of the House, including stenographers of committees, and the manner of the execution of their duties shall be vested in the Speaker.

§ 898. Reporters of debates and committee stenographers.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 899-901.

Rule XXXV.

This rule was adopted in 1874 (V, 6958).

The reporters of debates have borne an important part in the evolution by which the House has built up the system of a daily verbatim report of its proceedings, made by its own corps of reporters (V, 6959). Since these reporters have become officers of the House a correction of the Congressional Record has been held a question of privilege (V, 7014-7016).

The arrangement, style, etc., of the Congressional Record is prescribed by the Joint Committee on Printing (V, 7024), who also determine as to the insertion of maps, diagrams, etc. (V, 7024). The Record is for the proceedings of the House and Senate only, and matters not connected therewith are rigidly excluded (V, 6962). It is not, however, the official record, that function being fulfilled by the Journal (IV, 2727). As a general principle the Speaker has no control over the Record (V, 6984, 7017), but words spoken by a Member after he has been called to order may be excluded by direction of the Speaker (V, 6975-6978). But the House, and not the Speaker, determines what liberty shall be allowed to a Member who has leave to extend his remarks (V, 6997-7000), whether or not a copyrighted article shall be printed therein (V, 6985), as to an alleged abuse of the leave to print (V, 7012), or as to a proposed amendment (V, 6983).

As a general rule the Committee of the Whole has no control over the Congressional Record (V, 6986); but the Chairman, in the preservation of order, may direct the exclusion of disorderly words spoken by a Member after he has been called to order (V, 6987). In a case wherein the committee conceived that a letter read in committee involved a breach of privilege, it reported the matter to the House for action, and the House struck the letter from the Record (V, 6986). The Chairman of the Committee of the Whole does not determine the privileges of a Member under a general leave to print in the Record, that being for the House alone (V, 6988). Neither may the Committee of the Whole grant a general leave to print, although for convenience it does permit individual Members to extend their remarks (V, 7009, 7010).

While the House controls the Congressional Record, the Speaker with the assent of the House laid down the principle that words spoken by a Member in order might not be changed by the House, as this would be determining what a Member should utter on the floor (V, 6974). Neither should one House strike out matter placed in the Record by permission of the other House (V, 6966). But the House may correct the speech of one of its Members so that it may record faithfully what he actually said (V, 6972). Where

§ 899. Relations of the Speaker to the Congressional Record.

§ 900. Relations of the Committee of the Whole to the Congressional Record.

§ 901. Correction of the Congressional Record.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XXXV.

§§ 902, 903.

a Member had uttered disorderly words on the floor without objection, the House yet decided that it was not precluded from action when the words, after being withheld for revision, appeared in the Record, and struck them out (V, 6979, 6981).

The House has also ordered stricken from the Record printed speeches condemned as unparliamentary for reflections on Members, committees of the House, the House itself (V, 7017), and the Senate (V, 5129). It is improper for a Member to have published in the Record the individual votes of Members on a question of which the yeas and nays have not been entered on the Journal (V, 6982). A correction of the Record which involves a motion and a vote is recorded in the Journal (IV, 2877). Propositions to make corrections are sometimes considered by the Committee on Printing (VI, 4349). In debating a resolution to strike from the Record disorderly language a Member may not read the language (V, 7004); but it was held that as part of a personal explanation relating to matter excluded as out of order a Member might read the matter, subject to a point of order if the reading should develop anything in violation of the rules of debate (V, 5079). It has also been held that a Member may not, in a controversy over a proposed correction of the Record as to a matter of business, demand as a matter of right the reading of the reporter's notes (V, 6967).

A motion or resolution for the correction of the Congressional Record may be made properly after the reading and approval of the Journal (V, 7013), and is not in order pending the approval of the Journal (V, 6989), but is privileged after that (V, 7014-7019; Speaker Clark, Jan. 27, 1917, 2d sess., 64th Cong., p. 2124). A question of privilege as to an alleged error in the Record may not be raised until the Record has appeared (V, 7020), and a resolution to omit from the manuscript copy certain remarks declared out of order is not privileged (V, 7021). Offensive words having been stricken from the Record, a question of privilege may not arise therefrom (V, 7023).

It has been the practice to allow a Member, with the approval of the Speaker, to revise his remarks before publication in the Congressional Record (V, 6971); but he should not change the notes of his own speech in such a way as to affect the remarks of an opponent in controversy without bringing the correction to the attention of that Member (V, 6972; report of special committee presented Mar. 3, 1917, and adopted by House, Record, p. 4947, 2d sess., 64th Cong.). A Member is not entitled to inspect the Reporter's notes of remarks which do not contain reflections on himself, delivered by another Member and withheld for revision (V, 6964). Where a Member so revised his remarks as to affect the

§ 902. Privilege of propositions to correct the Congressional Record.

§ 903. Privilege of Member to revise his remarks in the Congressional Record.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 904, 905.

Rule XXXV.

import of words uttered by another Member, the House corrected the Record (V, 6973). The Joint Committee on Printing prescribes the conditions under which Members may revise their remarks (V, 7024).

The practice of inserting in the Congressional Record speeches not actually delivered on the floor has grown up by consent of the House as the membership has increased and it has become difficult at times for every Member to express at length on the floor his reasons for his attitude on public questions (V, 6990-6996, 6998-7000). The House quite generally stipulates, in granting leave to print, that it shall be exercised without unreasonable freedom (V, 7002, 7003). General leave to print may be granted only by the House, although in Committee of the Whole a Member, by unanimous consent, is sometimes given leave to extend his remarks (V, 7009, 7010). When a Member under leave to print places in the Record that which would not have been in order if uttered on the floor, the House may exclude the speech in whole or in part (V, 7005-7008). Thus, where a Member, under leave to print, made charges against another Member, the House ordered the speech stricken out (V, 7004). The principle that a Member shall not be called to order for words spoken in debate if business has intervened does not apply to a case where leave to print has been violated (V, 7005). Where a Member gets leave to insert one matter he may not print another (V, 7001). Leave to extend remarks does not permit a Member to insert in the Record statements and letters of others unless the leave granted specifies such matter, whether the extension be under general leave for all Members or individually. In Committee of the Whole leave for an extension of remarks should not be granted except in connection with remarks actually delivered and, if under the five-minute rule, relevant to the bill; and the extension under such circumstances should be brief. (Speaker Longworth, Mar. 18, 1926, 69th Cong., 1st sess., p. 5854.) The Chairman of the Committee of the Whole has declined to entertain a request for an extension of remarks actually delivered under the five-minute rule but not relevant to the bill under consideration. (Chairman Lehlbach, Mar. 18, 1926, 69th Cong., 1st sess., p. 5861.) Where a Member abused a leave to print on the last day of a session, the House at the next session condemned the abuse and declared the matter not a legitimate part of the official debates (V, 7017). An abuse of the leave to print gives rise to a question of privilege (V, 7005-7008, 7011), and a resolution to expunge from the Record in such a case is offered as of privilege (V, 7012). An inquiry by the House as to an alleged abuse of the leave to print does not necessarily entitle the Member implicated to the floor on a question of personal privilege (V, 7012).

2. Such portion of the gallery over the Speaker's chair as may be necessary to accommodate representatives of the press wishing to report debates and proceedings

§ 905. Unofficial reporters in the press gallery and on the floor.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XXXVI.

§906.

shall be set aside for their use, and reputable reporters and correspondents shall be admitted thereto under such regulations as the Speaker may from time to time prescribe; and the supervision of such gallery, including the designation of its employees, shall be vested in the standing committee of correspondents, subject to the direction and control of the Speaker; and the Speaker may assign one seat on the floor to Associated Press reporters, one to the Sun Press Association, one to the United Press Association, one to the National News Association, one to the Central News Association of America, and one to the New York Herald Syndicate, and regulate the occupation of the same. And the Speaker may admit to the floor, under such regulations as he may prescribe, one additional representative of each press association.

This rule was first adopted in 1857, and has been amended from time to time as the occasion demanded (V, 7304), including February 18, 1909, April 5, 1911, January 18, 1916, and December 13, 1916.

RULE XXXVI.

PAY OF WITNESSES.

The rule for paying witnesses subpoenaed to appear before the House or either of its committees shall be as follows: For each day a witness shall attend, the sum of two dollars; for each mile he shall travel in coming to or going from the place of examination, the sum of five cents each way; but nothing shall be paid for traveling when the witness has been summoned at the place of trial.

§ 906. Fees of witnesses before the House or committees.

This rule was adopted in 1872, with amendments in 1880 (III, 1825).

RULE XXXVII.

PAPERS.

The clerks of the several committees of the House shall, within three days after the final adjournment of a Congress, deliver to the Clerk of the House all bills, joint resolutions, petitions, and other papers referred to the committee, together with all evidence taken by such committee under the order of the House during the said Congress and not reported to the House; and in the event of the failure or neglect of any clerk of a committee to comply with this rule the Clerk of the House shall, within three days thereafter, take into his keeping all such papers and testimony.

§ 907. Duties of clerk and committees as to custody of papers before committees.

This rule was adopted in 1880 (V, 7260).

RULE XXXVIII.

WITHDRAWAL OF PAPERS.

No memorial or other paper presented to the House shall be withdrawn from its files without its leave, and if withdrawn therefrom certified copies thereof shall be left in the office of the Clerk; but when an act may pass for the settlement of a claim, the Clerk is authorized to transmit to the officer in charge with the settlement thereof the papers on file in his office relating to such claim, or may loan temporarily to

§ 908. Custody of papers in the files of the House.

RULES OF THE HOUSE OF REPRESENTATIVES.

Rules XXXIX, XL.

§§ 909, 910.

an officer or bureau of the executive departments any papers on file in his office relating to any matter pending before such officer or bureau, taking proper receipt therefor.

This rule was adopted in 1873 and amended in 1880 (V, 7256).

A statute (31 Stat. L., p. 642) provides that papers in the files of the House which are not required to be retained there, shall be delivered to the Librarian of Congress for custody, although they are to be considered as still in the files of the House.

The House usually allows the withdrawal of papers only in cases where there has been no adverse report. As the rules for the order of business give no place to the motion to withdraw, it is made by unanimous consent (V, 7259).

RULE XXXIX.

BALLOT.

In all cases of ballot a majority of the votes given shall be necessary to an election, and
§ 909. Elections by ballot. where there shall not be such a majority on the first ballot the ballots shall be repeated until a majority be obtained; and in all balloting blanks shall be rejected and not taken into the count in enumeration of votes or reported by the tellers.

This rule was first adopted in 1789 and was amended in 1837 (V, 6003). The last election by ballot seems to have occurred in 1868 (V, 6003).

RULE XL.

MESSAGES.

Messages received from the Senate and the President of the United States, giving notice of bills passed or approved, shall be entered in the Journal and published in the Record of that day's proceedings.

§ 910. Entry of messages in the Journal and Record.

RULES OF THE HOUSE OF REPRESENTATIVES.

§§ 911, 912.

Rules XLI, XLII.

This rule was adopted in 1867 and amended in 1880 (V, 6593).

The House may receive a message from the Senate when the Senate is not in session. (June 13, 1911, p. 1968, 62d Cong., 1st sess.)

RULE XLI.

EXECUTIVE COMMUNICATIONS.

Estimates of appropriations and all other communications from the executive departments, intended for the consideration of any committees of the House, shall be addressed to the Speaker, and by him referred as provided by clause 2 of Rule XXIV.

§ 911. Reception and reference of executive communications, including estimates.

This rule was adopted in 1867 (IV, 3573).

Formerly estimates of appropriations were transmitted through the Secretary of the Treasury (IV, 3573-3576, 4045), but under the Budget Act they are transmitted by the President.

RULE XLII.

QUALIFICATIONS OF OFFICERS AND EMPLOYEES.

No person shall be an officer of the House, or continue in its employment, who shall be an agent for the prosecution of any claim against the Government, or be interested in such claim otherwise than as an original claimant; and it shall be the duty of the Committee on Accounts to inquire into and report to the House any violation of this rule.

§ 912. Officers and employees not to be agents of claims.

This rule was adopted in 1842 (V, 7227).

RULES OF THE HOUSE OF REPRESENTATIVES.

Rule XLIII.

§§ 913, 914.

RULE XLIII.

JEFFERSON'S MANUAL.

The rules of parliamentary practice comprised in Jefferson's Manual shall govern the House in all cases to which they are applicable, and in which they are not inconsistent with the standing rules and orders of the House and joint rules of the Senate and House of Representatives.

§ 913. 'Relations
of Jefferson's
Manual to the
rules of the
House.

This rule was adopted in 1837 (V, 6757). Joint rules have not been in force since the Forty-third Congress.

PRINTING.

The old rule on the subject of printing was abolished by the Sixty-second Congress, as the printing statute covered the subject.

§ 914.

General printing statute, approved January 12, 1895. The following amendment was adopted January 20, 1905:

That section fifty-four of said act is hereby amended by adding at the end thereof as follows:

That hereafter the usual number of reports on private bills, concurrent or simple resolutions, shall not be printed. In lieu thereof there shall be printed of each Senate report on a private bill, simple or concurrent resolution, three hundred and forty-five copies, which shall be distributed as follows: To the Senate document room, two hundred and twenty copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the superintendent of documents, ten copies; and of each House report on a private bill, simple or concurrent resolution, two hundred and sixty copies, which shall be distributed as follows: To the Senate document room one hundred and thirty-five copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the superintendent of documents, ten copies: *Provided*, That nothing contained in this act shall be construed to prevent the binding of all Senate and House reports in the reserve volumes bound for and delivered to the Senate and House libraries: *Provided*, That not less than twelve copies of each report on bills for the payment or adjudication of claims against the Government shall be kept on file in the Senate document room.

RULES OF THE HOUSE OF REPRESENTATIVES.

§ 914.

Rule XLIII.

SEC. 2. That section fifty-five of said act is hereby amended to read as follows:

"SEC. 55. There shall be printed of each Senate and House public bill and joint resolution six hundred and twenty-five copies, which shall be distributed as follows: To the Senate document room, two hundred and twenty-five copies; office of Secretary of Senate, fifteen copies; House document room, three hundred and eighty-five copies. There shall be printed of each Senate private bill, when introduced, when reported, and when passed, three hundred copies, which shall be distributed as follows: To the Senate document room, one hundred and seventy copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the superintendent of documents, ten copies. There shall be printed of each House private bill, when introduced, when reported, and when passed, two hundred and sixty copies, which shall be distributed as follows: To the Senate document room, one hundred and thirty-five copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the superintendent of documents, ten copies. The term 'private bill' shall be construed to mean all bills for the relief of private parties, bills granting pensions, bills removing political disabilities, and bills for the survey of rivers and harbors. All bills and resolutions shall be printed in bill form, and, unless specially ordered by either House, shall only be printed when referred to a committee, when favorably reported back, and after their passage by either House. Of concurrent and simple resolutions, when reported, and after their passage by either House, only two hundred and sixty copies shall be printed, except by special order, and the same shall be distributed as follows: To the Senate document room, one hundred and thirty-five copies; to the Secretary of the Senate, fifteen copies; to the House document room, one hundred copies; to the superintendent of documents, ten copies."

Approved, January 20, 1905.

The following amendment adopted June 25, 1910:

That that part of section fifty-four of an act approved January twelfth, eighteen hundred and ninety-five, providing for the public printing and binding and the distribution of public documents which reads as follows: "The remainder of said documents and reports shall be reserved by the Public Printer in unstitched form, and shall be held subject to be bound in the number provided by law, upon orders from the Vice President, Senators, Representatives, Delegates, Secretary of the Senate, and Clerk of the House, in such binding as they shall select, except full morocco or calf; and when not called for and delivered within two years after printing shall be delivered in unbound form to the superintendent of documents for distribution," as amended by Public Resolution Numbered Thirty-six, approved June

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thirtieth, nineteen hundred and two, is hereby repealed, to take effect at the close of the second session of the Sixty-first Congress, and the reserved documents and reports therein provided shall thereafter not be printed: *Provided*, That nothing herein shall operate to abridge in any way the right of the Vice President, Senators, Representatives, Delegates, Resident Commissioners, Secretary of the Senate, and Clerk of the House to have bound in half morocco, or material not more expensive, one copy of every public document to which he may be entitled.

Approved, June 25, 1910.

Amendment authorizing Clerk of the House et al. to order reprinting of bills. Approved March 1, 1907. (Hinds' Prec., vol. 5, 7319.)

Amendment to correct abuses in printing, approved March 30, 1906.

Amendment to prevent unnecessary printing and binding, approved March 30, 1906.

Amendment relative to public printing and binding, approved January 15, 1908.

FORMS.

FORMS.

§§ 915-917.

OF PUTTING QUESTIONS.

The forms of putting ordinary questions are:

§ 915. Form of
putting question
for viva voce vote.

The Speaker, rising, says:

As many as are in favor (as the question may be) say
“Aye.”

And after the affirmative voice is expressed:

As many as are opposed say “No.”

If a division is demanded, the Speaker says:

§ 916. Form of
putting the
question for vote
by division.

As many as are in favor will rise and stand until
counted.

And after the count of the affirmative:

The ayes will be seated and the noes will stand.

If tellers are ordered:

§ 917. Form of
putting the
question for vote
by tellers.

The gentleman from ———, Mr. ———, and the
gentleman from ———, Mr. ———, will take their
places as tellers. As many as are in favor (as the
question may be) will now pass between the tell-
ers and be counted.

After those in the affirmative have been counted
the tellers report the number and the Chair announces
it to the House; after which he announces:

As many as are opposed will now pass between the tellers and be counted.

FORMS.

§§ 918-921.

The number of those in the negative is reported, after which there is an opportunity for additional Members to vote on either side, the tellers reporting the additions. Then the Chair reports the vote.

If the yeas and nays are ordered:

§ 918. Form of putting the question for a roll call.

As many as are in favor (as the question may be) will, as their names are called, answer "Yea;" as many as are opposed will answer "Nay." The Clerk will call the roll.

Form for ordering a call of the House:

The gentleman from —— moves a call of the House. As many as are in favor of ordering a call of the House will say "Aye;" as many as are opposed will say "No." * * * The "Ayes" have it and a call of the House is ordered. The Doorkeeper will close the doors, and the Clerk will call the roll.

Form for ordering an automatic call of the House:

The gentleman from —— makes the point of order that a quorum is not present and voting. * * * A quorum is not present. The Doorkeeper will close the doors, the Sergeant-at-Arms will bring in absentees. As many as are in favor (as the question may be) will, as their names are called, answer "Yea;" as many as are opposed will answer "Nay." The Clerk will call the roll.

Form for putting the previous question:

§ 919. Form of putting the question on the previous question.

The gentleman from —— demands the previous question. As many as are in favor of ordering the previous question will say "Aye;" as many as are opposed will say "No."

Form of putting the question on the vote to pass a bill returned with the President's objections:

§ 920. Form of putting the question on passing a vetoed bill.

Will the House on reconsideration agree to pass the bill, the objections of the President to the contrary notwithstanding? As many as are in favor, etc.

OF PETITIONS.

The House has never adopted any form for petitions, and petitioners have used various forms:

§ 921. Various forms of petitions.

To the House of Representatives of the United States:

Your petitioners, citizens of the United States and residents of ——, ——, respectfully represent, etc.

[Here follow signatures.]

FORMS.

§§ 922-924.

To the House of Representatives of the United States of America in Congress assembled:

Your petitioners [description, place of residence, etc.] humbly petition for legislation to provide ———.

For this your petitioners do ever pray.

Very respectfully, your obedient servants,

[Here follow signatures.]

To the House of Representatives of the United States:

We, your petitioners, residents of ———, ———, respectfully request that ———.

[Here follow signatures.]

On the outside of each petition should be indorsed:

Petition of [name of first petitioner] and ——— other residents of ———, ———, praying for ———.

or a similar indorsement, which shall describe the petitioners, state their numbers, and give the substance of their prayer.

OF ORDERS, RESOLUTIONS, AND BILLS.

Form of an order:

§ 922. Form of orders.

Ordered, That the hour of daily meeting of the House shall be 12 m.

Form of a simple resolution of the House:

§ 923. Form of simple resolutions of the House.

Resolved, That the House declines to consider any bill which violates its constitutional prerogative of originating revenue bills.

Form of a concurrent resolution for adjournment of Congress sine die:

§ 924. Forms of concurrent resolutions; and for adjournment sine die and for a recess.

Resolved by the House of Representatives (the Senate concurring), That the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on the ——— day of ———, ———, at ——— o'clock.

FORMS.

§§ 925-927.

Form of concurrent resolution for a recess of Congress:

Resolved by the House of Representatives (the Senate concurring), That when the two Houses adjourn on ———, ———, they stand adjourned until 12 o'clock meridian, ———, ———, ———.

Form of joint resolutions:

§ 925. Form of
joint resolutions.

JOINT RESOLUTION

Authorizing, etc. [as the title may be].

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all, etc.

The title is also indorsed on the back of the joint resolution with the name of the Member introducing it and the committee to which it is referred.

Form of bills:

§ 926. Form of
bills.

A BILL

For the establishment, etc. [as the title may be].

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, etc.

OF REPORTS FROM COMMITTEES.

Form of report from Committee of the Whole:

§ 927. Form of
reports from
committees of
the whole.

The Committee of the Whole having risen and the Speaker having taken the Chair, the Chairman takes his place in the area in front of the Clerk's desk, and says:

Mr. Speaker, the Committee of the Whole House [or Whole House on the state of the Union, as the case may be] have had under consideration the bill [giving number and title] and have directed me to report the same with amendments, with the recommendation that the amendments be agreed to and that the bill do pass.

If there are no amendments, or if several bills are reported at once, or if the Committee of the Whole recommend that a bill do not pass or be laid on the table, the report is modified accordingly.

If the Committee of the Whole have not concluded consideration, the Chairman reports that "they have come to no resolution thereon."

As soon as the Chairman has reported to the Speaker, the latter repeats the report to the House, beginning:

The gentleman from ———, Chairman of the Committee of the Whole House [or Whole House on the state of the Union] reports that that committee have had under consideration, etc.

Form of report from a standing or select committee:

The Committee on ——— to whom was referred the bill (H. R. 1010) § 928. Form of reports from standing or select committees.	"to provide," etc., having considered the same, report it to the House [with amendments specified, if there be any] with the recommendation that it do pass [or do not pass, or be laid on the table, etc.].
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Reports often embody arguments or statements of facts in addition to the recommendations of the committee.

The general form of a report of a committee of conference is as follows:

§ 929. Form of reports from managers of conferences.	The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 10) "making appropriations," etc., having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:
---	--

That the Senate recede from its amendment numbered ———.

FORMS.

§ 930.

That the House recede from its disagreement to the amendment of the Senate numbered — and agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered — and agree to the same with an amendment as follows: ——— etc., and the Senate agree to the same.

That the House recede from its amendment to the amendment of the Senate numbered —.

_____,
_____,
_____.

Managers on the part of the House.

_____,
_____,
_____.

Managers on the part of the Senate.

[On the duplicate copy which is presented in the Senate the names of the Senate managers are placed first].

The written statement accompanying a conference report need not preserve regularity as to form so long as it embodies a fairly comprehensive statement of the effect of the settlement in conference. In general the form most approved is:

§ 930. Form of
statement
accompanying a
conference report.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. —) making, etc., submit the following written statement explaining the effect of the action agreed on: ——— etc.

_____,
_____,
_____.

Managers on the part of the House.

OF RESOLUTION PROVIDING FOR AN INVESTIGATION.

Resolved, That the Speaker appoint a select committee of —— members of the House, and that such committee be instructed to inquire into ——, and for such purposes it shall have power to send for persons and papers and administer oaths, and shall have the right to report at any time. The expenses of said inquiry shall be paid out of the contingent fund of the House upon vouchers approved by the chairman of said committee, to be immediately available.

§ 931. Form of resolutions directing investigations.

[The portion empowering the committee to administer oaths is probably superfluous, as the statutes empower the Speaker, the Chairman of the Committee of the Whole or of any other committee, and any Member of the House to administer oaths to witnesses in any case under examination (III, 1769); and in the later practice it has been settled that the authority to administer oaths should be given by law rather than by rule of either House (III, 1823, 1824, 2081, 2162, 2294, 2303). The provision for payment of expenses out of the contingent fund is more properly made the subject of a separate resolution, which should be considered by the Committee on Accounts, while the portion ordering the investigation is considered by the Committee on Rules. But frequently the Committee on Rules reports on both propositions, although their report in such a case is necessarily subject to a point of order.]

§ 932. Administration of oaths to witnesses.

OF SPECIAL ORDER FOR CONSIDERATION OF A BILL.

Resolved, That immediately upon the adoption of this resolution the House shall proceed to consider the bill (H. R. ——) entitled, etc., and at the end of —— hours a vote shall be taken on all pending amendments and on the bill to final passage.

§ 933. Form of a special order for consideration of a bill.

[This is merely an illustration of the general form of such orders. They vary greatly according to the nature of the bill to be considered and other considerations. For forms to suit varying conditions, see IV, 3231-3265.]

FORMS.

§ 934.

OF LETTERS OF RESIGNATION.

Members more frequently resign by transmitting a letter of resignation directly to the executive of the State, in which case a letter is sent to the Speaker in form as follows:

WASHINGTON, D. C., ———, ———.

SIR: I beg leave to inform you that I have this day transmitted to the governor of ——— my resignation as a Representative in the Congress of the United States from the ——— district of ———.

Hon. ———,

Speaker of the House of Representatives.

The letter to the governor may be in form as follows:

His Excellency ———,
Governor of ———.

SIR: I hereby tender to you my resignation as a Member of the House of Representatives in the Congress of the United States from the ——— district of ———.

If a Member resigns directly to the House he may do so by a letter in this form:

WASHINGTON, D. C., ———, ———.

§ 934. Forms of
letters of
resignation.

SIR: I hereby resign my office as Representative in the Congress of the United States from the ——— district of ———.

With great respect, your obedient servant,

Hon. ———,

Speaker of the House of Representatives.

When a resignation is tendered in this manner, the House orders the Speaker to inform the governor of the State of the resignation.

OF CEREMONIES FOR DECEASED MEMBERS.

§ 935. Resolutions
on death of a
Representative.

The death of a Member, when it occurs during a session of Congress, is announced to the House by a colleague, who presents resolutions in general form as follows:

1. *Resolved*, That the House has heard with profound sorrow of the death of Hon. ———, a Representative from the State of ———.
2. *Resolved*, That a committee of ——— Members of the House, with such Members of the Senate as may be joined, be appointed to attend the funeral.
3. *Resolved*, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions, and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.
4. *Resolved*, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

These resolutions having been agreed to, and the Speaker having appointed the committee, the Member then offers the following:

5. *Resolved*, That, as a further mark of respect, this House do now adjourn

The death of a Member during the recess of Congress is usually announced by a colleague at the beginning of the next session, and resolutions in form similar to those numbered one, four, and five are offered.

Sometimes several such announcements are made at once, and a single adjournment is taken for all.

FORMS.

§ 936, 937.

The death of a Senator is announced to the House only by message from the Senate; and after receipt of the message, resolutions in form as follows are adopted:

§ 936. Resolutions
on the death of a
Senator.

Resolved, That the House has heard with profound sorrow of the death of the Hon. ———, a Senator of the United States from the State of ———.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased Senator.

Resolved, That a committee of ——— Members be appointed on the part of the House to join the committee appointed on the part of the Senate to attend the funeral.

Resolved, That as a further mark of respect the House now adjourn.

At an appropriate time after the death of a Member a colleague offers an order:

§ 937. Memorial
exercises in honor
of a deceased
Member.

Ordered, That ———, the ——— day of ———, at ——— o'clock, be set apart for addresses on the life, character, and public services of Hon. ———, late a Representative from the State of ———.

The day thus set apart having arrived, a colleague offers the following:

Resolved, That the business of the House be now suspended, that opportunity may be given for tributes to the memory of Hon. ———, late a Member of this House from the State of ———.

Resolved, That as a particular mark of respect to the memory of the deceased, and in recognition of his distinguished public career, the House, at the conclusion of these exercises, shall stand adjourned.

Resolved, That the Clerk communicate these resolutions to the Senate.

Resolved, That the Clerk send a copy of these resolutions to the family of the deceased.

BILLS.

STAGES OF A BILL OF THE HOUSE.

1. Introduction:

By a Member by laying the bill on the Clerk's table informally. A
 § 938. Introduction of a bill and its progress to final passage. Member sometimes introduces a petition only, leaving to the committee the drawing of a bill, such a petition referred to a committee having jurisdiction of the subject giving authority to report a bill. Sometimes communications addressed to the House from the executive departments or from other sources are referred to committees by the Speaker and give authority for the committees to originate bills. Messages from the President also are referred by the Speaker or the House and give jurisdiction to the committees receiving them to originate bills.

2. Reference to a standing or select committee:

Public bills are referred under direction of the Speaker; private bills are indorsed with the names of the committees to which they go under the rule by the Members introducing them. Senate bills are referred under direction of the Speaker. A bill is numbered and printed when referred.

3. Reported from the committee:

Committees having leave to report at any time make their reports from the floor; other committees make their reports by laying them on the Clerk's table informally. The bill and the report are printed when reported.

4. Placed on the Calendar:

Occasionally a privileged bill is considered when reported; but usually it is placed with the unprivileged bills on the Calendar where it belongs under the rule by direction of the Speaker.

5. Consideration in Committee of the Whole:

Public bills which do not raise revenue or make or authorize appropriations of money or property do not go through this stage. All other bills are considered in Committee of the Whole. The stages of consideration in Committee of the Whole are: General debate; reading for amendment under the five-minute rule; order to lay aside with a favorable recommendation, or to rise and report; reporting of to the House.

6. Reading a second time in the House:

Bills not requiring consideration in Committee of the Whole are read a second time in full, after which they are open to debate and amendment in any part. Bills considered in Committee of the Whole are read a second time in full in that committee and when reported out, with or without amendments, are not read in full again, but are subject to further debate or amendment in the House unless the previous question is ordered at once.

7. Engrossment and third reading:

The question on House bills is taken on ordering the engrossment and third reading at one vote. If decided in the affirmative, the reading a third time usually takes place at once, by title. But any Member may demand the reading in full of the engrossed copy, in which case the bill is laid aside until it can be engrossed. Senate bills come to the House in engrossed form, and the question is put on third reading alone. When the question on engrossment and third reading of a House bill or third reading of a Senate bill is decided in the negative, the bill is lost as much as if defeated on the final passage. The question on engrossment and third reading is not made from the floor, but is put by the Speaker as a matter of course.

8. Passage:

The question on the passage of a bill is put by the Speaker as a matter of course, without awaiting a motion from the floor.

9. Transmission to the Senate by message.

10. Consideration by the Senate:

In the Senate House bills are usually referred to committees for consideration and report, after which they have their several readings, with opportunities for debate and amendment. The same procedure takes place in the House as to bills sent from the Senate.

11. Return of, from the Senate without amendments:

If the Senate passes a House bill without amendment it returns it to the House, where it is at once enrolled on parchment for signature. A bill thus passed without amendment goes into possession of the clerk, and is not laid before the House prior to enrollment. If the Senate rejects a House bill the House is informed. Similar procedure occurs when the House passes a Senate bill without amendment.

12. Return of, from the Senate with amendments:

House bills returned with Senate amendments go to the Speaker's table. If any Senate amendment requires consideration in Committee of the Whole the bill is referred by the Speaker informally to the standing committee having jurisdiction, and when that committee reports the bill with recommendations it is referred to Committee of the Whole House on the state of the Union, to be there considered and reported to the House itself. When no Senate amendment requires consideration in Committee of the Whole the bills come before the House directly from the Speaker's table.

13. Consideration of Senate amendments by the House:

When a bill with Senate amendments comes before the House, the House takes up each amendment by itself and may vote to agree to it, agree to it with an amendment, or disagree to it. If it disagrees it may ask a conference with the Senate or may send notice of its disagreement, leaving it to the Senate to recede or insist and ask the conference.

14. Settlement of differences by conference:

When disagreements are referred to conference, the managers embody their settlement in a report, which is acted on by each House as a whole. When this report is agreed to the bill is finally passed, and is at once enrolled for signature.

15. Enrollment on parchment:

The House in which a bill originates enrolls it.

BILLS.

§ 938.

16. Examination by the Committee on Enrolled Bills:

While the Committee on Enrolled Bills is described as a joint committee, each branch acts independently. The chairman of each branch affixes to the bills examined a certificate that the bill has been found truly enrolled.

17. Signing by the Speaker and President of the Senate:

The enrolled bill is first laid before the House of Representatives and signed by the Speaker, whether it be a House or Senate bill, after which it is transmitted to the Senate and signed by the president of that body.

18. Transmittal to the President of the United States:

The Chairman of the Committee on Enrolled Bills for each House carries the bills from his House to the President. In the House of Representatives a report of the bills taken to the President each day is made to the House and entered on its Journal.

19. Approval by the President:

If the President approve he does so with his signature.

20. Disapproval by the President:

When the President disapproves a bill he returns it to the House in which it originated, with a message stating that he disapproves, and giving his reasons therefor.

21. Action on, when returned disapproved:

The House to which a disapproved bill is returned has the message read and spread on its Journal. It may then consider at once the question of passing the bill notwithstanding the President's objections, or may postpone to a day certain, or refer to a committee for examination. The vote on passing the bill, notwithstanding the President's objections, must be carried by two-thirds. If the bill fails to pass in the House to which it is returned it remains there; but if it passes it is sent to the other House for action.

22. Filing with the Secretary of State:

When approved by the President a bill is deposited in the office of the Secretary of State; and when the two Houses have passed a bill, notwithstanding the President's objections, the presiding officer of the House which acts on it last transmits it to the Secretary of State.

MISCELLANEOUS.

MISCELLANEOUS.

§§ 939, 940.

The franking privilege is established and regulated by law:

§ 939. The franking privilege.

No allowance is made the Member for postage (R. S., sec. 44); but Members and Delegates and the Clerk may send and receive free through the mail all public documents printed by order of Congress, the name of the user and designation of the office being written thereon, this privilege continuing until the 1st day of December following the expiration of the user's term of office (19 Stat. L., p. 336; 20 Stat. L., p. 10). The Congressional Record or any part thereof, or speeches or reports contained therein, may, under the frank of a Member or Delegate, to be written by himself, be carried free under such regulations as the Postmaster General may prescribe (18 Stat. L., p. 343). Seeds transmitted by the Commissioner of Agriculture, or by any Member or Delegate receiving seeds from the department for transmission, are sent free in the mails under frank, and this privilege applies to ex-Members and ex-Delegates for a period of nine months after the expirations of their terms (18 Stat. L., p. 343). The Public Printer furnishes to the Department of Agriculture for the use of Members franks for the transmission of seeds (32 Stat. L., pp. 741, 742). Members, Members-elect, Delegates, and Delegates-elect may send free through the mails, under their franks, any mail matter to any government official or to any person, correspondence not exceeding 2 ounces in weight, upon official or departmental business (28 Stat. L., p. 622; 26 Stat. L., p. 1081; 30 Stat. L., p. 443).

The government telegraph lines may be used by Members and officers of Congress solely on public business (18 Stat. L., p. 20).

The assignment of rooms in the office building of the House of Representatives is regulated by the law of May 28, 1908 (35 Stat. L., p. 578), which provides:

§ 940. Assignment of rooms in the Office Building.

That the assignment of rooms in the office building of the House of Representatives, which shall hereafter be designated as the House Office Building, heretofore made by resolution or order of the House of Representatives, shall continue in force until modified or changed in accordance with the provisions of this resolution, and the room so assigned to any Representative shall continue to be held by such Representative as his individual office room so long as he shall remain a Member or Member-elect of the House of Representatives, or until he shall relinquish the same; subject, however, to the provisions of this resolution, and no Representative shall allow his office room to be used for any other purpose.

MISCELLANEOUS.

§ 940.

Any Member or Member-elect of the House of Representatives may file with the Superintendent of the Capitol Building and Grounds a request in writing that any individual office room be assigned to him whenever it shall become vacant. If only one such request has been made for any room which shall at any time have become vacant, the room shall be assigned as requested. If two or more requests are made for the same vacant room, preference shall be given to the Representative making the request who has been longest in continuous service as a Member and Member-elect of the House of Representatives. If two or more Representatives with equal length of continuous service, or two or more Representatives-elect make request for the same room, preference shall be given to the one first preferring his request. A Representative or Representative-elect making request for the assignment of a vacant room may withdraw the same at any time and no one shall have pending at the same time more than one such request. The assignment of a new room to a Representative, upon his request, or the appointment of any Representative having an individual office room as chairman of a committee having a committee room, shall act as a relinquishment by him of the room previously assigned to him.

Representatives having rooms assigned to them in the foregoing manner may exchange rooms one with another, but such exchange shall be valid only so long as both Members making the exchange shall remain continuously Members or Members-elect of the House of Representatives.

The Superintendent of the Capitol Building and Grounds shall keep a record of the assignment of rooms heretofore or hereafter made, exchanges which may be made, requests for vacant rooms which may be filed, and the assignment thereof, which record shall be open for the inspection of Representatives or Representatives-elect of the House.

In the matter of the assignment of rooms under this resolution, Delegates in Congress and the Commissioners from Porto Rico and the Philippine Islands shall be treated the same as Representatives.

The assignment and reassignment of the rooms and other space in the House Office Building shall be subject to the control of the House of Representatives by rule, resolution, order, or otherwise. Nothing in this resolution shall be construed to affect or repeal the provisions of law heretofore enacted placing said House Office Building under the control of the Superintendent of the Capitol Building and Grounds, subject to the approval and direction of the commissions provided for respectively in the act of March third, nineteen hundred and three, and the act of March fourth, nineteen hundred and seven.

Unoccupied space in said building shall be assigned by the Superintendent of the Capitol Building and Grounds under the direction of the commission and subject to the control of the House of Representatives.

MISCELLANEOUS.

Distribution of Pub. Docs.

941

Distribution of documents, reports, bills, laws, etc.

	House document room.	Clerk of the House.	Senate document room.	Secretary of the Senate.	Executive Mansion.	State Department.	Treasury Department.	War Department.	Navy Department.	Interior Department.	Post Office Department.	Agricultural Department.	Department of Justice.	Department of Commerce and Labor.	Smithsonian Institution.	Interstate Commerce Commission.	Civil Service Commission.	Commissioners of the District of Columbia.	Superintendent of documents.	Library of Congress.	Legations.
House documents.....	420	20	150	10	2	20													2	2	40
Senate documents.....	360	10	220	10	2	20													2	2	40
House reports on private bills, concurrent or simple resolutions.....	100		135	10	2	20													10	2	...
Senate reports on private bills, concurrent or simple resolutions.....	100																				...
House reports on public bills and joint resolutions.....	420	15	150	5	2	20													10	2	...
Senate reports on public bills and joint resolutions.....	360	10	220	5	2	20													2	2	40
House and Senate public bills and joint resolutions.....	385		225	10	2	10	5	5	5	5	5	5	5	5	5	5	5	5	2	2	40
House private bills, when introduced, when reported, and when passed.....	100		35	10	2	10	5	5	5	5	5	5	5	5	5	5	5	5	10	5	...
Senate private bills, when introduced, when reported, and when passed.....	100		170	15	2	10	5	5	5	5	5	5	5	5	5	5	5	5	10	5	...
Concurrent and simple resolutions, when introduced in either House.....	385		225	10	2	10	5	5	5	5	5	5	5	5	5	5	5	5	2	5	40
Concurrent and simple resolutions, when reported and after their passage by either House.....	100		135	10	2	10	5	5	5	5	5	5	5	5	5	5	5	5	10	5	40
Public laws.....	1,000		550			200-500	60												2	2	40
Private laws, postal conventions, and treaties.....	100		100			200-500	60												2	2	...

² Senate public bills and joint resolutions.

¹ House public bills and joint resolutions.

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SEC. 301. This title may be cited as the "Federal Corrupt Practices Act, 1925."

§ 941A. Federal corrupt practices act, 1925.

SEC. 302. When used in this title—

(a) The term "election" includes a general or special election, and, in the case of a Resident Commissioner from the Philippine Islands, an election by the Philippine Legislature, but does not include a primary election or convention of a political party;

(b) The term "candidate" means an individual whose name is presented at an election for election as Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, whether or not such individual is elected;

(c) The term "political committee" includes any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates or presidential and vice presidential electors (1) in two or more States, or (2) whether or not in more than one State if such committee, association, or organization (other than a duly organized State or local committee of a political party) is a branch or subsidiary of a national committee, association, or organization;

(d) The term "contribution" includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution;

(e) The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift, of money, or any thing of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure;

(f) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons;

(g) The term "Clerk" means the Clerk of the House of Representatives of the United States;

(h) The term "Secretary" means the Secretary of the Senate of the United States;

(i) The term "State" includes Territory and possession of the United States.

SEC. 303. (a) Every political committee shall have a chairman and a treasurer. No contribution shall be accepted, and no expenditure made, by or on behalf of a political committee for the purpose of influencing an election until such chairman and treasurer have been chosen.

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(b) It shall be the duty of the treasurer of a political committee to keep a detailed and exact account of—

(1) All contributions made to or for such committee,

(2) The name and address of every person making any such contribution, and the date thereof;

(3) All expenditures made by or on behalf of such committee; and

(4) The name and address of every person to whom any such expenditure is made, and the date thereof.

(c) It shall be the duty of the treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure by or on behalf of a political committee exceeding \$10 in amount. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items.

SEC. 304. Every person who receives a contribution for a political committee shall, on demand of the treasurer, and in any event within five days after the receipt of such contribution, render to the treasurer a detailed account thereof, including the name and address of the person making such contribution, and the date on which received.

SEC. 305. (a) The treasurer of a political committee shall file with the Clerk between the 1st and 10th days of March, June, and September, in each year, and also between the 10th and 15th days, and on the 5th day, next preceding the date on which a general election is to be held, at which candidates are to be elected in two or more States, and also on the 1st day of January, a statement containing, complete as of the day next preceding the date of filing—

(1) The name and address of each person who has made a contribution to or for such committee in one or more items of the aggregate amount or value, within the calendar year, of \$100 or more, together with the amount and date of such contribution;

(2) The total sum of the contributions made to or for such committee during the calendar year and not stated under paragraph (1);

(3) The total sum of all contributions made to or for such committee during the calendar year;

(4) The name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of \$10 or more has been made by or on behalf of such committee, and the amount, date, and purpose of such expenditure;

(5) The total sum of all expenditures made by or on behalf of such committee during the calendar year and not stated under paragraph (4);

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(6) The total sum of expenditures made by or on behalf of such committee during the calendar year.

(b) The statements required to be filed by subdivision (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

(c) The statement filed on the 1st day of January shall cover the preceding calendar year.

SEC. 306. Every person (other than a political committee) who makes an expenditure in one or more items, other than by contribution to a political committee, aggregating \$50 or more within a calendar year for the purpose of influencing in two or more States the election of candidates, shall file with the Clerk an itemized detailed statement of such expenditure in the same manner as required of the treasurer of a political committee by section 305.

SEC. 307. (a) Every candidate for Senator shall file with the Secretary and every candidate for Representative, Delegate, or Resident Commissioner shall file with the Clerk not less than ten nor more than fifteen days before, and also within thirty days after, the date on which an election is to be held, a statement containing, complete as of the day next preceding the date of filing—

(1) A correct and itemized account of each contribution received by him or by any person for him with his knowledge or consent, from any source, in aid or support of his candidacy for election, or for the purpose of influencing the result of the election, together with the name of the person who has made such contribution;

(2) A correct and itemized account of each expenditure made by him or by any person for him with his knowledge or consent, in aid or support of his candidacy for election, or for the purpose of influencing the result of the election, together with the name of the person to whom such expenditure was made; except that only the total sum of expenditures for items specified in subdivision (c) of section 309 need be stated;

(3) A statement of every promise or pledge made by him or by any person for him with his consent, prior to the closing of the polls on the day of the election, relative to the appointment or recommendation for appointment of any person to any public or private position or employment for the purpose of procuring support in his candidacy, and the name, address, and occupation of every person to whom any such promise or pledge has been made, together with the description of any such position. If no such promise or pledge has been made, that fact shall be specifically stated.

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(b) The statements required to be filed by subdivision (a) shall be cumulative, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

(c) Every candidate shall inclose with his first statement a report, based upon the records of the proper State official, stating the total number of votes cast for all candidates for the office which the candidate seeks, at the general election next preceding the election at which he is a candidate.

SEC. 308. A statement required by this title to be filed by a candidate or treasurer of a political committee or other person with the Clerk or Secretary, as the case may be—

(a) Shall be verified by the oath or affirmation of the person filing such statement, taken before any officer authorized to administer oaths;

(b) Shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk or Secretary at Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Clerk or Secretary of its non-receipt;

(c) Shall be preserved by the Clerk or Secretary for a period of two years from the date of filing, shall constitute a part of the public records of his office, and shall be open to public inspection.

SEC. 309. (a) A candidate, in his campaign for election, shall not make expenditures in excess of the amount which he may lawfully make under the laws of the State in which he is a candidate, nor in excess of the amount which he may lawfully make under the provisions of this title.

(b) Unless the laws of his State prescribe a less amount as the maximum limit of campaign expenditures, a candidate may make expenditures up to—

(1) The sum of \$10,000 if a candidate for Senator, or the sum of \$2,500 if a candidate for Representative, Delegate, or Resident Commissioner; or

(2) An amount equal to the amount obtained by multiplying three cents by the total number of votes cast at the last general election for all candidates for the office which the candidate seeks, but in no event exceeding \$25,000 if a candidate for Senator or \$5,000 if a candidate for Representative, Delegate, or Resident Commissioner.

(c) Money expended by a candidate to meet and discharge any assessment, fee, or charge made or levied upon candidates by the laws of the State in which he resides, or expended for his necessary

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personal, traveling, or subsistence expenses, or for stationery, postage, writing, or printing (other than for use on billboards or in newspapers), for distributing letters, circulars, or posters, or for telegraph or telephone service, shall not be included in determining whether his expenditures have exceeded the sum fixed by paragraph (1) or (2) of subdivision (b) as the limit of campaign expenses of a candidate.

SEC. 310. It is unlawful for any candidate to directly or indirectly promise or pledge the appointment, or the use of his influence or support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy.

SEC. 311. It is unlawful for any person to make or offer to make an expenditure, or to cause an expenditure to be made or offered, to any person, either to vote or withhold his vote, or to vote for or against any candidate, and it is unlawful for any person to solicit, accept, or receive any such expenditure in consideration of his vote or the withholding of his vote.

SEC. 312. Section 118 of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March 4, 1909, is amended to read as follows:

"SEC. 118. It is unlawful for any Senator or Representative in, or Delegate or Resident Commissioner to, Congress, or any candidate for, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or any officer or employee of the United States, or any person receiving any salary or compensation for services from money derived from the Treasury of the United States, to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person."

SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any election to any political office, or for any corporation whatever to make a contribution in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation which makes any contribution in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation who consents to any contribution by the corporation in violation of this section

shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

SEC. 314. (a) Any person who violates any of the foregoing provisions of this title, except those for which a specific penalty is imposed by sections 312 and 313, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) Any person who willfully violates any of the foregoing provisions of this title, except those for which a specific penalty is imposed by sections 312 and 313, shall be fined not more than \$10,000 and imprisoned not more than two years.

SEC. 315. This title shall not limit or affect the right of any person to make expenditures for proper legal expenses in contesting the results of an election.

SEC. 316. This title shall not be construed to annul the laws of any State relating to the nomination or election of candidates, unless directly inconsistent with the provisions of this title, or to exempt any candidate from complying with such State laws.

SEC. 317. If any provision of this title or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 318. The following Acts and parts of Acts are hereby repealed: The Act entitled "An Act providing for publicity of contributions made for the purpose of influencing elections at which Representatives in Congress are elected," approved June 25, 1910 (chapter 392, Thirty-sixth Statutes, page 822), and the Acts amendatory thereof, approved August 19, 1911 (chapter 33, Thirty-seventh Statutes, page 25), and August 23, 1912 (chapter 349, Thirty-seventh Statutes, page 360); the Act entitled "An Act to prevent corrupt practices in the election of Senators, Representatives, or Delegates in Congress," approved October 16, 1918 (chapter 187, Fortieth Statutes, page 1013); and section 83 of the Criminal Code of the United States, approved March 4, 1909 (chapter 321, Thirty-fifth Statutes, page 1088).

SEC. 319. This title shall take effect thirty days after its enactment.

Approved, February 28, 1925.

In so far as it applies to party primaries or conventions for designating candidates, section 8 of the campaign publicity act of August 19, 1911, as amended August 23, 1912, is not within the power conferred upon Congress by Article I, section 4, of the Constitution, which regulates the manner of holding elections, or Article I, section 8, clause 18, which authorizes Congress to make all laws necessary and proper for carrying into effect express powers. (U. S. v. Newberry, 256 U. S., p. 232.)

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Ruling by Speaker Clark June 13, 1912, on power
§ 942 of conferees on conference report on
Army appropriation bill, sustaining conference report:

On page 20 of the bill, in line 11, the House inserted a provision:

"For travel allowance to enlisted men on discharge, \$900,000."

The Senate added a proviso:

"*Provided*, That hereafter when an enlisted man who is enlisted on or before July 1, 1912, is discharged from the service, except by way of punishment for an offense, he shall be entitled to transportation in kind, etc."

All that the conferees did to that Senate amendment was, in line 1 of the amendment, after the word "man," to strike out all down to and including the comma after the word "twelve"; and those words are:

"Who is enlisted on or after July 1, 1912."

All that that does is simply to broaden it, and it is not a parliamentary question. It is a question for the court to decide whether those men are entitled to the pay they otherwise would have received. The Chair therefore overrules the point of order.

On page 38 of the bill the House inserted a proviso, beginning on line 12, as follows:

"*Provided further*, That no part of this appropriation shall be expended at any Army post which the Secretary of War has decided or may decide to abandon in the interest of the service."

The Senate struck that out. The conferees then inserted a proviso on the same subject, appointing a commission to inquire into and advise the Secretary of War, or anybody seeking information upon that subject, what Army posts should be abandoned; and the rest of the proviso is simply detail thereof. It has been repeatedly held—I do not know by how many Speakers, but by more than one—that in a case like that, where there is no departure from the subject matter—and the subject matter in this case is the abandonment of Army posts, and the reciting of 25 Army posts was simply a detail—a commission might be appointed. The Chair calls attention to one case where a bill was brought in providing for the construction of a public road. The conferees changed that so as to appoint a commission for a survey of the public road. That was held to be in order. The subject matter of this amendment or proposition is the abandonment of Army posts. The matter that the conferees put into it is simply a detailed arrangement of how to get at abandoning the Army posts.

The Chair therefore overrules that point of order.

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The next point of order is the one made to section 6, which treats of the consolidation of the establishments of the Adjutant General, the Inspector General, and the Chief of Staff. It is a very long section. It fixes the term, among other things, of the Chief of Staff. It fixes the length of recess, if the Chair may be permitted to use that term, that any man who holds that position shall take from that office.

It may be that it is simply the reenactment of an existing statute; if it is not, it is very close to it. Now, it treats of the subject of the General Staff and the Chief of Staff. The Chair has nothing to do, as the Chair stated to the gentleman from Indiana [Mr. Crumpacker], with the motives or quarrels that have been going on in the War Department about the Chief of Staff and several other things. It does not make any difference how it got in, and it does not make any difference, so far as the parliamentary situation is concerned, as to the effect of it on individuals. The only question is whether this matter, inserted by the conference committee, is germane to the proposition touching the Chief of Staff. The Chair thinks it is, and the point of order is overruled.

After further debate,

The SPEAKER. The reason why the Chair invited argument upon this amendment is that day before yesterday, when the gentleman from Illinois [Mr. Prince] made his points of order, he very kindly, at the suggestion of the Chair, furnished the Chair with a copy, and the Chair had Judge Crisp, parliamentary secretary, hunt up the authorities and examine them. The Chair had formed somewhat of a general opinion, not fixed, but subject to revision, on the points of order suggested by the gentleman from Illinois [Mr. Prince]; but this one, the most difficult of all of them, the gentleman from Illinois had not noted before, and it came on the Chair unexpectedly.

The gentleman from Illinois [Mr. Prince] and Members holding his views have argued the question elaborately, and the truth is that the reason why the Chair invited gentlemen on the other side to argue it is that the Chair was very much inclined at that time to hold with the gentleman from Illinois, and did not need any more instruction from that point of view. Now the whole matter has been argued elaborately.

The paragraph over which this controversy arises is subheaded "Water and sewers at military posts."

The proviso which the House put in is as follows:

"That no part of this appropriation shall be expended for permanent improvements at any of the following-named Army posts."

Here follows a list of 25 Army posts, including Fort D. A. Russell. The Senate struck out the proviso, the gist of which is "permanent improvements." The conferees inserted the following words in lieu of the proviso:

“Provided, That not exceeding \$1,000 of the sum herein appropriated, together with the unexpended balance, which is hereby reappropriated, of the appropriation in the Army appropriation act approved March 3, 1911, for the improvement of the Crow Creek or Fort D. A. Russell target and maneuver reservation, Wyoming, may be expended by the Secretary of War, in his discretion, in the acquirement by purchase or condemnation proceedings of certain tracts of land required for the maneuvering of troops and other military purposes, lying within the limits of the aforesaid reservation.”

There are two general rules governing conferences. The first is that conferees can not inject into a bill an absolutely new subject, and the second is that what they do inject into a bill must be germane. The view of the Chair is that in the ordinary construction of language this proviso is separated entirely from the preceding part of this section. The paragraph is headed, “Water and sewerage at military posts.” It treats of that. Then comes the proviso “That no part of this appropriation shall be expended for permanent improvements at any of the following-named Army posts.”

That introduces a brand-new subject, namely, permanent improvements. We have knowledge that what the House was trying to do, or preparing the way to do, was to get rid of these 25 posts. That was the view of the House. The bill went over to the Senate, and the Senate struck out that whole proviso. Some of us know, I think, how it came to be stricken out. Of course, it is not the business of the Chair to comment on the Senate or any Senator thereof, but when you consider what was put in at last it does not require a very difficult process of reasoning to find out how it happened to be put in. The House conferees had to agree to this proposition made by the Senate conferees, otherwise there would have been no agreement in conference.

During the time that this exceedingly interesting debate has been going on various gentlemen have suggested various things and cited various authorities. So far as the Chair has been able to ascertain, the authorities he is going to read now seem to be very nearly in point, and these authorities have largely influenced his opinion.

In the second session of the Fifty-eighth Congress (Record, pp. 410-411; Journal, pp. 423-424) Mr. Speaker Cannon delivered a very elaborate opinion, and here is the rule which he laid down:

“It is true that if the whole paragraph in the bill as it passed the House had been stricken out”—

And that part of it is exactly what happened in this case—
“and a substitute therefor proposed by the Senate”—

That did not happen—

“or if the Senate had stricken out the paragraph without proposing a substitute, and the House had agreed to the amendments of the Senate, then

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the conferees might have had jurisdiction touching the whole matter and might have agreed upon any provision that would have been germane."

That is the general rule, as Speaker Cannon laid it down, and it fits this case. Then in section 6422 of Hinds' Precedents—this is Speaker Carlisle's decision. On August 3, 1886, the House had under consideration the report of the committee of conference on the river and harbor bill. Mr. William M. Springer, of Illinois, made the point of order that the conferees had included new matter in their report. The Speaker ruled:

"The House passed a bill to provide for the improvement of rivers and harbors and making an appropriation for that purpose. That bill was sent to the Senate, where it was amended by striking out all after the enacting clause"—

Now, that is exactly the same state of case as Mr. Speaker Cannon passed on—

"and inserting a different proposition in some respects, but a proposition having the same object in view. When that came back to the House it was treated, and properly so, as one single amendment, and not as a series of amendments, as was contended for by some gentlemen on the floor at the time.

"It was nonconcurrent in by the House, and a conference was appointed upon the disagreeing votes of the two Houses. That conference committee having met, reports back the Senate amendment as a single amendment with various amendments, and recommends that it be concurred in with the other amendments which the committee has incorporated in its report. The question, therefore, is not whether the provisions to which the gentleman from Illinois alludes are germane to the original bill as it passed the House, but whether they are germane to the Senate amendment which the House had under consideration and which was referred to the committee of conference. If germane to that amendment, the point of order can not be sustained on the ground claimed by the gentleman from Illinois. The Chair thinks they are germane to the Senate amendment, for, though different from the provisions contained in the Senate amendment, they relate to the same subject, and therefore the Chair overrules the point of order."

Ruling by Speaker Clark on power of conferees.

§ 943. Rendered on August 17, 1912, second session Sixty-second Congress, page 11176, on naval appropriation bill. Points of order sustained, which rejected report of conferees.

The House having under consideration the conference report on the bill (H. R. 24565) making appropriations for the naval service for the fiscal year ending June 30, 1913, and for other purposes,

Mr. Fitzgerald made the point of order that the conferees have exceeded their authority by including matters in the report not in disagreement between the two Houses.

After debate,

The Speaker sustained the point of order, and said:

There is no question at all in the mind of the Chair but that these points of order must be sustained. As it is a question which is liable to arise several times very soon, the Chair will state his position as to his understanding of it.

The rule is this: That the conferees can not go beyond something that is in the original bill—that is proposition No. 1; or in the Senate amendment, and that is proposition No. 2; or in the House amendment to the Senate amendment, and that is proposition No. 3.

That rule is as old as the 23d day of June, 1812, and it is barely possible that it is older. But, on the 23d of June, 1812, Henry Clay rendered an opinion of which that is the substance.

It has been stated variously by various Speakers. Speaker Crisp stated the matter with perfect clarity. In Hinds' Precedents, section 6408, volume 5, Speaker Crisp said:

"The question for the Chair to determine is whether the amendment which has been agreed to and reported by the conference committee is germane to the amendment of the Senate or to the original bill. The amendment may not be germane to the original bill, yet if it is germane to the Senate amendment the conference committee might report it.

"The Chair thinks that the practice of enlarging the powers of conference committees beyond the strict letter of the rule was wrong; that conferees ought to be held to the rule, and that amendments they propose in conference reports shall be germane either to the original text or to the amendment."

Let us apply these principles to these points raised by the gentleman from New York [Mr. Fitzgerald]. Of course, everybody understands that the Chair is not ruling the way he would like to see the bill go. The Chair would like to see mining operations started in Alaska in a proper way, but this is not the proper way to do it.

Page 51, line 22, the language of the bill was: "That all officers authorized in this act, etc., shall receive." The conferees inserted, after the word "officers," the words "of the dental corps," so that it will read "All officers of the dental corps" shall do so and so.

Mr. Speaker Cannon rendered an opinion involving that precise point. In volume 5, Hinds' Precedents, section 6417, the headlines or syllabi read as follows:

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"The managers of a conference must confine themselves to the differences committed to them. Managers of a conference may not change the text to which both Houses have agreed."

Of course that simply states the rule. Here is the case itself:

"On March 7, 1904, Mr. Henry H. Bingham, of Pennsylvania, called up the conference report on the legislative appropriation bill.

"Thereupon Mr. James R. Mann, of Illinois, made the point of order that the managers of the conference had exceeded their authority in relation to a certain paragraph of the bill, which, with the Senate amendments (which are italicized), appeared as follows in the printed copy:

" 'No part of any money appropriated by this act shall be available for paying expenses of horses and carriages or drivers therefor for the personal use of any officer provided for herein by this act other than the President of the United States, the heads of executive departments, and the Secretary to the President.' "

The conferees inserted the words "or any other" before the word "act," making it read "this or any other act," and also inserted the words "by this or any other act," so that it would read "for the personal use of any officer provided for by this or any other act, other than the President," and so forth.

Speaker Cannon said:

"The managers have inserted between the words 'personal' and 'use' the words 'or official.' Mr. Mann insisted that this amendment of the text, to which both Houses agreed, was beyond the power of either House, and, consequently, beyond the power of the conferees, citing the precedent of April 23, 1902."

After debate, Speaker Cannon withheld his decision, evidently wanting to investigate the matter.

Here is the sum and substance of Speaker Cannon's decision:

"This provision in the conference report inserts legislation that never was before the House or before the Senate, and it was quite competent for the conferees, if they could do this, to have stricken out the whole paragraph and inserted anything that was germane. They could have stricken out the words 'other than the President of the United States, the heads of executive departments, and the Secretary to the President'; and while there were but two words inserted, the provision, if enacted into law, would be far-reaching and would run along the line of the whole public service."

Now, that is just exactly this case as to this particular amendment.

Speaker Cannon goes on to say:

"As to the wisdom of such a provision, the Chair is not called upon to intimate any opinion. It is for the House and the Senate to determine upon

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the wisdom of it, and, as the House and the Senate never have considered that proposition, the Chair is of opinion that the conferees exceeded their power, and therefore sustains the point of order."

The second point of order is that on page 30, beginning with line 23—and it does not make any difference as far as the parliamentary points are concerned how desirable it is to mine coal in Alaska. The Chair thinks it very desirable, and would agree with the gentleman from Missouri [Mr. Shackelford] on the desirability of it; but that is neither here nor there.

The language of the Senate amendment was:

"That \$75,000 of said sum, or so much thereof as may be necessary, may be used for the survey, investigation, and report upon coal and coal fields available for the production of coal for the use of the United States Navy, or any vessel of the United States."

The conferees inserted a proposition for mining coal, and surely there is a wide difference in the proposition to survey, investigate, and report upon coal and coal fields and a proposition for the mining of coal. That point must also be sustained.

In amendment 7, on page 5 of the bill, line 24, it is provided:

"Hereafter any naval officer on the retired list may, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed in time of peace shall receive the pay and allowances of an officer of the active list of the grade from which he was retired."

The conferees inserted into that amendment these words, "of the Navy or Marine Corps," and also inserted the words, "with his consent," and made some other minor changes. The Chair may be wrong about it, but the Chair believes that the Navy and Marine Corps are two different institutions, and sustains the point of order in that regard. The point of order made against the conference report on amendment No. 87 is also sustained.

So the four points of order made by the gentleman from New York are sustained.

Ruling by Speaker Clark, March 2, 1915, sustaining
point of order against conference report on
§ 944. the ship purchase bill on the ground that
the conferees had gone outside the differences committed to them in regard to the time certain sections should take effect (Record, 3d sess. 63d Cong., p. 5208):

If there is anything settled about conferences between the two Houses it is this: Where two amounts are named, and the question is referred to

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the conferees, they may oscillate as much as they please between the two extremes, but they can not go below the lower amount and they can not go above the higher amount. That applies to sums of money in appropriation bills. This has been ruled so often that it is as familiar as the multiplication table. In tariff bills, where the House suggests one rate on any given article and the other House suggests another rate, the conferees can not go below the lower, and they can not go above the higher rate.

Unless the memory of the Chair is badly out of condition, this thing happened when the Payne bill was passed: There were certain amendments in controversy. The House fixed the rate on shoes, and so forth, at 15 per cent, and the Senate fixed it at 20 per cent. I have heard—I do not know that it is true, but from what happened afterwards I believe it to be true—that President Taft notified the conferees that if they did not cut that rate on boots and shoes to 10 per cent he would not sign the bill. I know that the House passed a resolution in order to enable the conferees to cut the rate down to 10.

As far as the suggestion made by the gentleman from Georgia [Mr. Crisp] is concerned, that where everything after the enacting clause is struck out, then the conferees have carte blanche to bring in a bill; but that is not this case here. The House never did strike out everything after the enacting clause in the Weeks bill. It practically agreed to the Weeks bill, which has really been in conference only technically. But the limit of time was fixed at two years, and the conferees extended it to three years. If they could extend it beyond two years, they could extend it until the end of time. Their limit was from zero to two. In the nature of things they could not go below zero; under the practice of the two Houses they could not go higher.

The Chair sustains that point of order.

Ruling by Speaker Clark (Mar. 3, 1915, Record, 3d
sess. 63d Cong., p. 5469), ruling in
§ 945. order the conference report on the Agricultural appropriation bill:

The point of order raised by the gentleman from Texas [Mr. Henry] has been repeatedly passed on. In the first place it seems to the Chair that the only sensible or correct way in which to regard the matter now in controversy is to consider this rural credit amendment offered by Senator McCumber as a separate subject, distinct from the bill proper. What happened about that was this: The Senate inserted the McCumber amendment,

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treating the whole subject of rural credits, and it was sent over to the House in that form. The House struck out the whole of the McCumber amendment. That is, it agreed to a substitute for the entire McCumber amendment. It did not leave a single line or word of the McCumber amendment. That put it exactly in the same situation as if everything after the enacting clause of a bill was struck out. And it has been held so often and so far back and by so many Speakers that where everything after the enacting clause is struck out the conferees have carte blanche to prepare a bill on that subject that it seems to the Chair that question is no longer open to controversy. The Chair will refer to just one or two of the rulings.

The ruling on the point made on the shipping bill has nothing to do with this bill, because the situations are not the same. The more the Chair thinks about the ruling he made on the shipping bill the better satisfied he is with it. The point raised there was the matter of time, which had never been passed upon before so far as the Chair knows; but it involved the principle of the higher and lower rates in a bill, or the larger and smaller amounts in a bill. In the shipping-bill contest it happened to be the question of time that was in controversy.

The case cited by the gentleman from Illinois [Mr. Mann] as to the immigration bill, which was passed on some three or four Congresses ago, is precisely on all fours with this. Now, in addition to that, several Speakers have taken a turn at it. In paragraph 6424 of Hinds' Precedents, volume 5, the syllabus, to use the legal phrase, is this:

"Where the disagreement is as to an amendment in the nature of a substitute for the entire text of a bill the managers have the whole subject before them and may exercise a broad discretion as to details."

The only change I would make in that language is to say that they have carte blanche on the subject.

"A point of order against a conference report should be made or reserved after the report is read and before the reading of the statement. On February 18, 1907, Mr. William S. Bennet, of New York, submitted the report of the managers of the conference on the bill (S. 4403) entitled 'An act to amend an act entitled 'An act to regulate the immigration of aliens into the United States,' approved March 3, 1903.'"

"Before the report was read Mr. John L. Burnett, of Alabama, proposed to reserve a point of order.

"The report having been read, a point of order was made by Mr. Burnett, who insisted that the managers had exceeded their authority in inserting the following provisions:

"*Provided further*, That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States

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or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone."

And the Speaker ruled that that provision was in order.

Section 6425, the syllabus:

"A Senate amendment having provided an "appropriation to construct a road, and conferees having reported in lieu thereof a provision for a survey, it was held that the provision was within the differences."

The question involved here is not what anyone thinks about rural credits or what anyone would like to have on the subject. The only thing for the Speaker to pass on at this juncture is whether or not the conferees exceeded their authority in doing this thing. Not only by the decision of the present Speaker on two different occasions, but by half a dozen of his predecessors, it brings this provision which the conferees brought in here within the rule, and the point of order of the gentleman from Texas is overruled.

The managers of a conference must confine themselves to the differences committed to them (V, 6417, 6418), and may not include subjects not within the disagreements (V, 6407, 6408) even

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though germane to a question in issue (V, 6419), but they may perfect amendments committed to them if they do not go beyond the differences (V, 6409-6413). Where an amendment provided for the creation of a rent commission to regulate the rent of buildings in the District of Columbia, it was held not in order to report a provision including in addition the regulation of the rent of lands. (Speaker Gillett, Oct. 4, 1919, Record, p. 6381.)

The House passed a bill for the control of the distribution of food products, etc. The Senate amended the bill by adding a rider known as the "District of Columbia Rent Bill," which created a rent commission in the District of Columbia. The House disagreed to all Senate amendments and sent the bill to conference. The managers in their report submitted substantially a new amendment in lieu of the Senate amendment.

The Senate amendment originally defined the term "rental property" as follows: "The term 'rental property' means any building or any part thereof in the District of Columbia."

In lieu of this provision the managers reported: "The term 'rental property' means any *land* or building or part thereof in the District of Columbia."

Mr. Begg made the point of order that the conferees had exceeded their authority.

After extended debate the Speaker sustained the point of order and said:

"The Chair appreciates the importance of sustaining a conference report, and the Chair has been anxious from the beginning here to be able, preserving his mental integrity, to rule that this conference report was in order. But presuming the authority of the rules of the House is more important than the inconvenience of sending a bill back to a conference, the Chair stated in the beginning of the discussion the difficulty which occurred to the Chair, hoping that that difficulty would be met and removed by argument. The Chair regrets to say that that difficulty still confronts him and seems insuperable. The gentleman from Massachusetts [Mr. Walsh] stated correctly that the question at issue is whether the conference report has gone beyond the subject matter of the Senate amendment. The Senate amendment dealt with rents, but at the very beginning it practically stated in a definition the precise subject with which it dealt, saying 'The term "rental property" means any building or part thereof in the District of Columbia.' That seems to the Chair to be the subject of the Senate amendment.

"Now, the conferees, it therefore seems to the Chair, were limited to that general subject. They might diminish it. They might take away from it. But the law is well settled that the conferees can not introduce any new subject. Anything in connection in the way of procedure referring to the subject matter would be allowed. But the difference between the Senate and the House was that the Senate dealt with buildings or parts thereof, and the House, by disagreeing, refused to deal with anything, so that the conferees, it seems to the Chair, were limited in their jurisdiction between legislation affecting buildings and no legislation at all. They could introduce any matter germane to buildings, but they could not go beyond that. They introduced the new subject 'land.' The Chair is disposed to think that if they had said 'land connected with buildings' it might have been in order, but the chairman of the committee very frankly stated that it was the intention of the committee to include land entirely separate from buildings. It seems to the Chair that if the House had not some distinct purpose in view, the word 'land' would not have been inserted. It broadens the scope of the Senate amendment by an entirely distinct subject matter, it seems to the Chair; and so the Chair feels constrained to sustain the point of order."

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Mr. Johnson of Kentucky appealed from the decision of the Chair, and on motion of Mr. Walsh, the appeal was laid on the table.

A motion to recommit containing an amendment creating a tariff commission, is not germane to a tariff bill.

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Speaker Clark (May 8, 1913, 1st sess., 63d Cong., p. 1381), ruled as follows:

"I have given to this question thorough consideration. By the courtesy of the gentleman from New York [Mr. Payne] and of the gentleman from Illinois [Mr. Mann], I was, at my own request, furnished last Monday with a copy of this motion to recommit. I have put in the larger part of the time since then in investigating all the rules, parliamentary practices, statements, precedents, arguments, and decisions on the subject. In addition to that there has been somewhere in the neighborhood of four hours' debate yesterday and to-day upon this same point. I heard every word of it. I made it a point to do so. Nearly every parliamentarian in the House—at least everyone who wanted to participate in these discussions—did participate. Two luminous opinions were rendered on the same point by the Chairman of the Committee of the Whole House on the state of the Union, the gentleman from Tennessee [Mr. Garrett], so that if I err in rendering this opinion I will err only after the fullest consideration.

"Before I go to the point of order I want to make one or two remarks. As the minority leader four years ago, the present occupant of the chair did offer the motion to recommit the Payne tariff bill, which has been read in part by the gentleman from Illinois [Mr. Mann]. I do not know how Mr. Speaker Cannon would have ruled if a point of order had been made, but my judgment is that if any gentleman had raised a point of order, the then Speaker would have ruled part of that motion out; and, of course, if part was not in order that would have rendered the entire motion out of order under the rules and precedents. The observation of the present occupant of the chair has been that gentlemen on the floor of the House—unless it be the gentleman from Illinois [Mr. Mann]—are not averse to playing a little politics once in a long while. [Laughter.]

"The gentleman from Illinois [Mr. Mann] has presented every word that can be said in favor of the germaneness of this proposition. The

Chair does not believe anybody can add to what has been said by the gentleman from Illinois. There is not a man in the House who knows better how to draw an amendment or motion to recommit that is in order than does the gentleman from Illinois. Yesterday he drew an amendment that was in order, providing 'that in ascertaining the fair value of foreign goods, as specified in this paragraph, the Secretary of the Treasury shall be assisted by a nonpartisan tariff commission to be appointed by the President.' That was the paragraph R, fourth section. It was voted down, because the House did not want it.

"The statement of the case at bar, against the germaneness of which the gentleman from Alabama [Mr. Underwood] makes his point of order, is this: The tariff bill as reported from the Committee of the Whole House on the state of the Union is pending. The gentleman from New York offers a motion to recommit with instructions. The gentleman from Alabama [Mr. Underwood] makes the point of order that the motion contains matter not germane, and therefore is not in order. This motion to recommit contains five propositions—one for a tariff commission; No. 2, for the reformation or revision of Schedule K, the wool schedule; No. 3, for the revision of Schedule I, the cotton schedule; No. 4, for the revision of all the remaining schedules; No. 5, providing that specific duties shall be substituted for ad valorem duties wherever possible.

"There seems to be no dispute about the germaneness of the last four propositions, and the entire controversy turns on the first one—that is, for the tariff commission.

"The rules involved in this matter are, first, paragraph 7 of Rule XVI:

" 'And no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.'

"That rule has been in existence ever since 1822. The truth is, the substance of it antedates the Constitution.

"The other rule involved is clause 3 of Rule XXI:

" 'No amendment shall be in order to any bill affecting revenue which is not germane to the subject matter in the bill.'

"The other half of that paragraph is—

" 'Nor shall any amendment to any item of such bill be in order which does not directly relate to the item to which the amendment is proposed.'

"That part of the rule is new, having been first adopted at the beginning of the Sixty-second Congress.

"It is true as stated by the gentleman from Illinois [Mr. Mann], that that last proposition was put in at least partly with reference to the scheme of revising the tariff schedule by schedule, but it is there nevertheless.

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"The subject matter of this tariff bill is the raising of revenue. The subject matter of the part of the motion to recommit which relates to the tariff commission is to gather information; or, to state it in other words, the purpose of the tariff bill is to get money, while the purpose of the tariff commission is to get information; and it seems to me that if the English language has any significance whatever the two propositions are different—that one is not germane to the other—and the truth is that the only kinship between these two propositions is that both contain the word 'tariff.'

"I might rest this case right here, but I am not content to do so. I am going to cite the authorities on which this opinion rests, and will begin with one by Speaker Carlisle, found in section 5825, volume 5, *Hinds' Precedents*. I will not read it all, because it is too long, and part of it has nothing to do with this matter anyway. Mr. Speaker Carlisle said, and it is true—

" 'It is not always easy to determine whether or not a proposed amendment relates to a subject different from that under consideration, within the meaning of the rule; and it is especially difficult to do so when, as in the present instance, the amendment may, by reason of the terms it employs, appear to have a remote relation to the original subject.'

"The case he was passing on was this: To a bill making deficiency appropriations for the Government Printing Office, among which was none relating to the salary of the Public Printer, an amendment legislating in relation to the selection of that officer was held to be not germane.

"The deficiency bill contained a proposition to pay the Public Printer's subordinates, and an amendment was offered to change the way of selecting the Public Printer. That is what he had reference to. He says:

" 'The subject to which the bill now under consideration relates is very clearly set forth in its title. It is "a bill making appropriations to supply certain deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1880, and for other purposes."'

"This tariff board or commission can not be let in under the phraseology 'for other purposes' in the title of this bill, because the words 'other purposes' in this bill mean the rest of the bill after you get through fixing the rates. Mr. Speaker Carlisle continued:

" 'The appropriations "for other purposes" contained in the bill do not relate at all to any of the subjects embraced in the amendment, and therefore need not be noticed. The words "for other purposes" are used here, as they usually are, to embrace subjects outside the main subjects to which the bill relates, and which are reported by the committee itself.

" 'The bill relates to no other subjects than appropriations of money for the purpose stated—'

"Just as this bill relates to nothing except raising money, and regulations pertaining to that—

“ “to supply deficiencies in the appropriations for the service of the Government.” One of the deficiencies which the bill provides for is the Government Printing Office. But the bill carefully enumerates the items for which the appropriation is to be made, and the salary of the Public Printer is not among them.’

“And on that statement he ruled that the amendment was not germane. It may be well to state for the edification of the House that this elaborate opinion of Mr. Speaker Carlisle, one of the most elaborate in Hinds’ Precedents, was not rendered offhand; but he had plenty of time to consider it—two or three days at least—and he evidently wrote it out and read it to the House.

“Here is another decision in point. It is impossible to tell whether it was rendered by Mr. Speaker Carlisle or by Gov. James B. McCreary, of Kentucky. The Journal says one and the Record the other. It matters little, as both are eminent men, long Members of the House. I will read the syllabus:

“ ‘Section 5841, volume 5, Hinds’ Precedents:

“ ‘To a bill relating to commerce between the States an amendment relating to commerce within the several States was offered and held not to be germane.’

“At first blush it might seem that both the bill and the amendment being on the subject of commerce, the amendment was germane to the bill, but it was decided that it was not, and it was decided correctly.

“Another precedent is found in section 5842, volume 5, of Hinds’ Precedents:

“ ‘To a bill relating to corporations engaged in interstate commerce an amendment relating to all corporations was held not to be germane. On February 7, 1903, the Committee of the Whole House on the state of the Union was considering the bill (H. R. 17) requiring all corporations engaged in interstate commerce to file returns with the Secretary of the Treasury, disclosing their true financial condition, and of their capital stock, and imposing a tax upon such as have outstanding capital stock unpaid in whole or in part.

“ ‘Mr. Henry D. Clayton, of Alabama, offered an amendment:

“ ‘SEC. —. There is thereby levied and shall be assessed and collected annually the following taxes on all corporations, whether domestic or foreign, doing business in the United States for profit or gain and having a capital stock of \$200,000 or more, at the rate of 10 per cent on its capital stock. The amount of the capital stock of any taxable corporation for the purposes of taxation shall be estimated according to its value fixed by the charter, or by resolution of its board of stockholders or directors, and shall

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include all assets owned by such corporation which are reserved or funded or set aside for the benefit of its stockholders.

“ ‘Mr. Marlin E. Olmsted, of Pennsylvania, made a point of order that the amendment was not germane, saying:

“ ‘The original bill proposes a tax upon corporations engaged in interstate commerce having unpaid capital stock outstanding. This bill relates entirely to corporations engaged in interstate commerce and prohibits them from making unlawful discriminations or entering into unlawful or injurious combinations to control prices, etc. That is all right. It is also proper to control such corporations or trusts by way of taxation. But the gentleman from Alabama introduces an entirely new subject. This proposed amendment imposes a tax of 10 per cent on the entire capital stock of every corporation, big and little, in the United States, whether engaged in interstate commerce or not.’

“The Chairman, Mr. Henry Sherman Boutell, of Illinois, sustained Mr. Olmsted’s point of order.

“Another precedent is found in section 5853, volume 5, Hinds’ Precedents:

“ ‘To a proposition giving a committee power to investigate tariff subjects an amendment commending tariff revision was held not to be germane.’

“That is almost this case turned around. That was held out of order by Mr. Speaker Stevenson, of Virginia.

“Section 5852, volume 5, of Hinds’ Precedents, states:

“ ‘A revenue amendment is not germane to an appropriation bill.’

“Opinion rendered by Mr. Chairman Meade, of Virginia.

“Then section 5854, volume 5, Hinds’ Precedents, gives this precedent:

“ ‘To a bill relating to the classification for customs purposes of worsted goods as woolens, an amendment relating to duties on wools and woolens and worsted cloths was held not to be germane.’

“An amendment was offered by Mr. W. C. P. Breckinridge, of Kentucky; the point of order was made against it by Gov. Dingley; and the decision was rendered by the Hon. Julius Caesar Burrows, subsequently Senator of the United States. An appeal was taken from the decision of the Chair holding it not germane, and the Chair was sustained by 74 to 36; and, incidentally, the Chair will say that the Committee of the Whole on yesterday was a very full committee and sustained two of the rulings of the Chairman of the Committee of the Whole [Mr. Garrett of Tennessee] on this very point by large majorities.

“I am now going to read an opinion by a gentleman who has served 29 years in the House of Representatives, and during all the 29 years has been a most eminent Member of this House, having been chairman of the Ways

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and Means Committee, the Hon. Sereno E. Payne, of New York, now 'father of the House,' the same distinguished gentleman who offers this motion to recommit.

"Section 5850, in volume 5 of Hinds' Precedents, reads as follows:

"To a bill authorizing the Court of Claims to adjudicate a claim, an amendment providing for paying the claim outright was held not to be germane.

"On January 14, 1898, the House, in Committee of the Whole House, considering the bill (S. 629) to confer jurisdiction on the Court of Claims in the case of the Book Agents of the Methodist Episcopal Church South against the United States."

"That was one of the most famous cases in the annals of Congress.

"This bill directed that the claim, with the accompanying petitions and papers, should be referred to the Court of Claims; that the court should render judgment against the United States in favor of said corporation for whatever sum might be found due; that in the trial the affidavits on file before Congress should be admitted as competent evidence, etc.

"To this bill Mr. S. B. Cooper, of Texas—

"Now a member of the Board of General Appraisers of the New York customhouse—

"proposed as an amendment, in the nature of a substitute, a bill authorizing and requiring the Secretary of the Treasury to pay the sum of \$288,000 in full satisfaction of the claim."

"That is, Mr. Cooper was taking a short cut to get the money which that was introduced to get.

"Mr. John Dalzell, of Pennsylvania, made the point of order that the Cooper amendment was not germane.

"On January 21, after debate, the Chairman [the Hon. Sereno E. Payne, of New York] decided:

"Prior to the adoption of any rules upon the subject it was in order to offer any amendment to the bill, whether it was germane or not, by way of substituting another bill or by way of an amendment. In March, 1789, the House made a rule which changed general parliamentary law upon the subject, and that rule was in these words:

"No new motion or proposition shall be admitted under color of amendment as a substitute for the question or proposition under debate until it has been postponed or disagreed to."

"That simply went to the substitute and not to the amendment of the proposition; and I suppose that under that, until the adoption of a new rule by the House of Representatives, an amendment which was not in the nature of a substitute would have been in order. In 1822 the House adopted this rule:

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“No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.”

“And that rule has been the rule of the House of Representatives from that day to this, and is now clause 7 of Rule XVI, under which this point of order is raised.

“The bill before the House is an act to confer jurisdiction on the Court of Claims in the case of the Book Agents of the Methodist Episcopal Church South against the United States, and the act provides not only to confer jurisdiction but gives the court authority to render judgment for any amount, and further provides that either party may appeal from the judgment that is so rendered. That is the whole scope of the bill which is now before the committee.”

“And to raise money or to get money is the whole scope of this bill now pending here to-day. I adopt the language of the gentleman from New York. He continued:

“The substitute offered is, briefly, an appropriation of some \$288,000—the Chair does not recollect the precise amount—to be paid to the book agents of the Methodist Episcopal Church South. That is the whole scope of the substitute that is offered as an amendment.”

“And the whole scope of this tariff-commission proposition is to get information.

“The question is whether, under the language of the rule, this is a proposition on a subject different from that under consideration. If it is, it can not be admitted as an amendment. If it is not, of course it would be in order as an amendment. * * * There is one precedent that seems to bear almost exactly upon the case before the committee, and that was the precedent cited the other day by the gentleman from Maine [Mr. Dingley] in the Forty-eighth Congress. A bill was before the House restoring Gen. Pleasonton to the Army and putting him on the retired list, in order that he might draw the pay of a retired officer. It might have been a bill entitled “for the relief of Gen. Pleasonton,” but it was entitled a bill to restore him to the Army and place his name on the retired list.

“When that bill was before the Committee of the Whole House the gentleman from New York, the late Mr. Cox—”

“And that is the Hon. Samuel Sullivan Cox, the first man who ever made a speech in this Hall, who was for eight years a Representative in the House from Ohio, and later for many years a Representative from New York City, and subsequently ambassador to Turkey—

“an able parliamentarian, was in the chair. During the progress of the bill the gentleman from Indiana, the late Mr. Browne, offered an amendment striking out all after the enacting clause and authorizing the Secre-

tary of the Interior to place his name on the pension list and pay him a pension at the rate of \$100 a month. That question was debated somewhat in Committee of the Whole, and the Chairman of the committee (Mr. Cox), the point of order having been raised by the late Mr. Bayne, of Pennsylvania—and the House will observe the controversy was between two Republicans, Mr. Browne and Mr. Bayne, while the Chairman was of opposite politics, so that it would seem that no politics could enter into that question at that time—the Chair stated that he felt compelled to sustain the point of order, as it changed the whole character of the bill.

“That, of course, defeated the amendment in Committee of the Whole. The bill was finally reported to the House.”

“The decision then goes on to recite the rest of the history of the bill. The gentleman from New York [Mr. Payne] then sustained the point of order against the Cooper amendment.

“The case that was cited by the gentleman from Illinois [Mr. Mann], as rendered by Mr. Dalzell, has nothing to do with this question, the Chair thinks. There was a controversy in the House from the very inception of the plan to establish the Department of Commerce and Labor as to whether there ought to be one department or two. The gentleman from Illinois [Mr. Mann] reported a bill putting two things together in one department, and the gentleman from Tennessee [Mr. Richardson] moved to cut that department in two and make two out of it. Surely that is not a parallel case. If this proposition about a tariff commission were germane, then a proposition to abolish the customs courts would be germane.

“A proposition to consolidate customs districts would be germane; a proposition to abolish the Bureau of Foreign and Domestic Commerce would be germane; or anything else that touched the tariff question in the remotest degree would be germane. A proposition to investigate the tariff rates established by Augustus Cæsar at Rome would be germane—one of the most perfect systems of getting money out of people by levying a tariff ever put into print.

“In view of these decisions, which are only a few out of scores that could be cited on the same line, I decide that the tariff-commission proposition is not germane to the tariff bill, and consequently the point of order made by the gentleman from Alabama [Mr. Underwood] is sustained. [Applause on the Democratic side.]

Decision by Chairman Fitzgerald holding out of order as not germane a proposition to amend a bill providing that funds resulting from the sale of coal, phosphate, oil, gas,

potassium, or sodium lands should be paid into the reclamation fund and disposed of in a certain way by providing that the proceeds should be used to constitute a "national good-roads fund" (Sept. 22, 1914, Record, p. 15553, 63d Cong., 2d sess.):

The Chair is prepared to rule. A few days since, while this bill was under consideration, notice was given that amendments would be offered to this section to provide for the disposition of the receipts from various leases authorized in the bill, in a manner different from that provided in the bill. As a result of the intimation then given, the Chair has given considerable attention to the questions that might arise under this section.

The rule of the House—Rule XVI, paragraph 7—is that no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment. That is the rule which generally is mentioned as requiring amendments to be germane to a bill or to the particular part of the bill to which an amendment is offered. Under general parliamentary law amendments need not be germane. Mr. Jefferson states in section 460 in his *Manual* that—

"Amendments may be made so as totally to alter the nature of the proposition; and it is a way of getting rid of a proposition by making it bear a sense different from what it was intended by the movers, so that they vote against it themselves."

In a decision by Mr. Carlisle in 1880 the history of the adoption of the rule by the House requiring amendments to be germane is set forth in great detail. Ever since 1822 the rule in the House has been as it is at present. Mr. Carlisle in his decision, which is found in volume 5, section 5825, of *Hinds' Precedents*, said:

"When therefore it is objected that a proposed amendment is not in order because it is not germane, the meaning of the objection is simply that it (the proposed amendment) is a motion or proposition on a subject different from that under consideration. This is the test of admissibility prescribed by the express language of the rule; and if the Chair, upon an examination of the bill under consideration and the proposed amendment, shall be of the opinion that they do not relate to the same subject, he is bound to sustain the objection and exclude the amendment, subject, of course, to the revisory power of the Committee of the Whole on appeal.

"It is not always easy to determine whether or not a proposed amendment relates to a subject different from that under consideration, within the meaning of the rule, and it is especially difficult to do so when, as in the

present instance, the amendment may, by reason of the terms it employs, appear to have a remote relation to the original subject."

That an amendment be germane means that it must be akin to, or relevant to, the subject matter of the bill. It must be an amendment that would appropriately be considered in connection with the bill. The object of the rule requiring amendments to be germane—and such a rule has been adopted in practically every legislative body in the United States—is in the interest of orderly legislation. Its purpose is to prevent hasty and ill-considered legislation, to prevent propositions being presented for the consideration of the body which might not reasonably be anticipated and for which the body might not be properly prepared.

The provision in this bill to which the amendment is offered provides:

"That all moneys received from royalties and rentals under the provisions of this act, excepting those from Alaska, shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the act of Congress approved June 17, 1902, known as the reclamation act, but after use thereof in the construction of reclamation works and upon return to the reclamation fund of any such moneys in the manner provided by the reclamation act and acts amendatory thereof and supplemental thereto, 50 per cent of the amounts derived from such royalties and rentals so utilized in and returned to the reclamation fund shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State for the support of public schools or other educational institutions, or for the construction of public improvements, as the legislature of the State may direct."

Any amendment to a section which is relevant to the subject matter, and which may be said to be properly and logically suggested in the perfecting of the section in the carrying out of the intent of the bill, would be germane to the bill and thus in order. To determine whether an amendment is relevant and germane, while not always easy, can best be done by applying certain simple tests. If it be apparent that the amendment proposes some modification of the bill, or of any part of it, which from the declared purposes of the bill could not reasonably have been anticipated and which can not be said to be a logical sequence of the matter contained in the bill, and is not such a modification as would naturally suggest itself to the legislative body considering the bill, the amendment can not be said to be germane.

It seems to the Chair that applying these tests to the amendment of the gentleman from Illinois [Mr. Mann] to determine whether it is germane, the question to be answered is whether the amendment is relevant, appropriate, and a natural and logical sequence to the subject matter of the bill.

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It is quite clear to the Chair that the amendment can not be so characterized, and that the committee could not have anticipated or reasonably expected that to a proposition that the money to be derived from the royalties of the leases, authorized to be made under this legislation, should be put in the reclamation fund, a well-established fund created for specific and definite purposes; that a proposition to create a new fund, to be known as the "national good-roads fund," could be considered as a natural, appropriate, relevant, and logical sequence to the proposal in the bill; and therefore the Chair sustains the point of order.

An amendment was then offered providing that
§ 949. the proceeds from the sale of lands within the naval petroleum reserves should be deposited in the Treasury to the credit of the "Navy petroleum fund," and upon a point of order being interposed Chairman Fitzgerald ruled as follows (Record, p. 15555, 2d sess., 63d Cong.):

The Chair intended, in making his former ruling, to call attention to a decision of Mr. Speaker Clark, made on June 23, 1914. On that occasion there was under consideration a Senate amendment in which it was proposed to provide that the proceeds of the sale of certain ships should be appropriated to build an additional battleship. To that amendment there was proposed an amendment providing that the money should be available for the construction of good roads. Mr. Speaker Clark held that that amendment was not in order, because it was not germane.

Very frequently the difficulty in reaching a conclusion as to whether an amendment is germane arises from the fact that while the proposed amendment is somewhat similar to the subject matter of the bill, the particular predilection of Members favorable to the amendment makes them reason themselves into a frame of mind to believe the amendment to be germane without careful analysis of its relation to the matter proposed to be amended. Under the act of June, 1910, the President is authorized to withdraw public lands for any public purposes. While it does not appear on the face of this bill that certain lands have been withdrawn for the purpose of providing oil for the Navy, it is a matter well within the knowledge of the Chair and of Members generally that such action has been taken. Suppose the President had also withdrawn public lands and set them aside to be utilized as military reservations or as forest reserves or for park or some other purpose. Would amendments be in order to this provision which would provide that

the royalties of any leases of such lands should be segregated in the Treasury and dedicated to the development of military reservations or of public parks or for some other public purpose assigned as the reason in the order of withdrawal made by the President? It seems to the Chair that such proposals could not reasonably be anticipated, nor could they be held as logical sequences to the provision in the bill.

The meaning of the word "germane" is akin to, or near to, or appropriate to, or relevant to, and "germane" amendments must bear such relationship to the provisions of the bill as well as meet the other tests; that is, that they be a natural and logical sequence to the subject matter, and propose such modifications as would naturally, properly, and reasonably be anticipated. The Chair has been unable to find any comprehensive definition of the term "germane" as used in a parliamentary sense. It is not easy to define, and it is difficult to state concisely, yet comprehensively, the rule to be applied to determine unerringly whether amendments are germane. The Chair believes that the true rule, and the tests to be used in applying it, have been here epitomized.

The fundamental purpose of this bill is not to provide revenue and to dedicate or segregate it in the Treasury. The fundamental purpose of the bill is "to authorize exploration for and disposition of coal, phosphates, oil, gas, potassium, or sodium," and the segregation of the proceeds of the leases authorized is merely incidental to the general scheme of the legislation.

The amendment of the gentleman from Wisconsin provides that "any moneys which may accrue to the United States under the provisions of this act from lands within the naval petroleum reserve shall be set aside for the needs of the Navy and deposited in the Treasury to the credit of the fund to be known as the Navy petroleum fund, which fund shall be applied to the needs of the Navy as Congress may from time to time direct by appropriation or otherwise."

To simplify determining whether this amendment is in order, without changing its fundamental purpose, let it be assumed that instead of designating this fund as a "Navy petroleum fund" it were to be designated as a "Navy battleship fund," and to be applied by appropriation or otherwise by Congress to the needs of the Navy. The Chair does not believe that it would be seriously argued that the creation of such a fund as an amendment to this provision would be considered germane. The mere designation of the fund as a Navy petroleum fund, because this bill applies to oil leases, while perhaps confusing, does not change the character of the amendment. It would be no different if it were proposed that royalties from leases made of parts of public lands reserved for military purposes be placed in the Treasury for the support of the Army, or of lands reserved for health purposes be applied for the support of the Public Health Service. The very suggestion of such amendments clarifies the situation and, in the opinion of the Chair, obviates any difficulty in determining the question of order. In the opinion of the Chair the amendment is not germane, and the Chair sustains the point of order.

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To a bill amending a general law in several particulars, an amendment providing for the repeal of the whole law was held germane (V, 5824), but the bill amending the law in several particulars must vitally affect the whole law. (Speaker Gillett, June 19, 1919, 66th Cong., 1st sess., p. 1393.)

The SPEAKER. The Chair lays before the House the conference report on the deficiency bill. There is a point of order pending. The conference report itself was agreed to, and there is pending a Senate amendment, which the Clerk will report.

The Clerk read as follows:

The Secretary of the Treasury is hereby directed to acquire and complete immediately the hospital at Broadview, Cook County, Ill., authorized and appropriated for by an act entitled "An act to authorize the Secretary of the Treasury to provide hospital and sanatorium facilities for discharged sick and disabled soldiers, sailors, and marines," approved March 3, 1919 (Public Act No. 326, 65th Cong.).

The last paragraph of section 6 of the "Act to authorize the Secretary of the Treasury to provide hospital and sanatorium facilities for discharged sick and disabled soldiers, sailors, and marines," approved March 3, 1919, is hereby amended to read as follows: The sum of \$1,500,000 is hereby authorized to be held as an emergency fund for the purchase of land and the erection thereon of buildings or for the purchase of land and buildings, and the remodeling thereof, suitable for hospital and sanatoria purposes, which the Secretary of the Treasury is hereby authorized to select and locate for the uses of the United States Public Health Service, if in his judgment the emergency requires it.

The SPEAKER. The gentleman from Iowa [Mr. Good] moved to concur in this amendment with an amendment, which the Clerk will report.

The Clerk read as follows:

Mr. Good moves that the House recede from its disagreement to the amendment of the Senate No. 21 and agree to the same, with an amendment as follows: In lieu of the matter inserted by the said amendment insert the following:

"The Secretary of the Treasury, until further authorized by law, shall take no further action under the authority granted in sections 6 and 7 and such portions of sections 8, 9, and 10 that relate to the acquisition of land and hospitals and the expenditures of funds authorized in sections 6 and 7 of the act entitled 'An act to authorize the Secretary of the Treasury to provide hospital and sanatorium facilities for discharged sick and disabled soldiers, sailors, and marines, approved March 3, 1919': *Provided*, That the Secretary of the Treasury shall report to Congress within the next 30 days

the contracts or obligations entered into and the sums expended under the authority granted in said act, together with his recommendations as to what action, if any, should be taken in the matter of acquiring any of the hospitals authorized to be acquired by said act."

The SPEAKER. The point of order made by the gentleman from Kentucky [Mr. Barkley] is that the amendment offered by the gentleman from Iowa [Mr. Good] is not germane to the Senate amendment. The rule on germaneness is very simple—

No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

While the rule seems simple, of course the difficulty always lies in deciding what is strictly the subject under consideration. In this instance the original bill gave the Secretary of the Treasury power to establish hospitals in several different places, and also other powers in respect to hospitals. The Senate amendment compelled him to build one of these hospitals, where before he simply was given authority to build it. The gentleman from Iowa [Mr. Good] moves an amendment to the Senate amendment to repeal the whole law which gave the Secretary the discretion to build these hospitals. It seems very clear to the Chair that if the only clause in the Senate amendment was to compel building the Chicago hospital, then an amendment which repealed the whole law giving the Secretary authority to build all these hospitals would not be in order. Indeed, it would be questionable, under the precedents, whether an amendment which forbade the Secretary to build the Chicago hospital alone would be in order. That, at least, would be open to debate, for although that in one sense is "the subject under consideration," yet it has been held, for instance, that a bill authorizing the Court of Claims to adjudicate a claim can not be amended to provide for payment of that same claim. The subject under consideration was not simply the claim, but the action to be taken concerning the claim. And so it might be argued that to forbid the Secretary of the Treasury to build one hospital is not germane to an amendment which compelled him to build it. But the question here is broader than that. The question here is, When an amendment orders the Secretary to build the hospital, is it germane to repeal the whole law under which the Secretary previously had power to build that hospital and others? The Chair thinks it clearly would not be germane if that was the only subject in the Senate amendment.

But in the Senate amendment there is another proposition which applies to a different part of the law to be amended. There is a clause in the original law setting aside a special fund of \$1,500,000 to purchase land and buildings. That clause is amended by the Senate amendment to authorize the Secretary not only to purchase buildings but also to erect buildings.

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That, of course, is a minor paragraph in the original law and this is a rather insignificant amendment. Yet it is argued, and argued plausibly and forcibly, that when more than one clause or section of a law is amended that fact brings the whole law before the House, and an amendment would then be in order to repeal the law. There is one notable precedent for that, but the Chair thinks it is clearly distinguished from this. In the case to which the Chair refers the amendments were numerous and went to the heart of the bill, and changed the bill in a vital way. In that case it was held that a motion to repeal the whole law was in order, but it seems to the Chair that in the case before us the two sections referred to by the Senate amendment are easily segregated from the rest of the law, and that they do not affect the whole law, and that a motion to repeal the whole law is not fairly germane to an amendment which simply changes those two paragraphs. The Chair, therefore, sustains the point of order.

Mr. GOOD. Mr. Speaker, in order that the record may be kept straight, I want to call the Speaker's attention to the fact that the amendment I have offered does not repeal the whole law.

The SPEAKER. The gentleman is correct in that.

Mr. GOOD. The law provides for turning over these buildings and it provides for a great many things.

The SPEAKER. The gentleman's correction is quite proper and the Chair thanks him for calling attention to it. The Chair did not state the facts accurately. He stated what in his mind was the general result rather than the exact reading of the amendment. The amendment offered by the gentleman does not, of course, repeal the law, but it does absolutely take away from the Secretary of the Treasury authority to complete these buildings, and, therefore, while it does not repeal the law, it makes nugatory for a time the provisions of the law and is equally within the line of reasoning of the Chair.

To a law providing for the insurance of soldiers
upon the payment of premiums, a
§ 951. proposition for the continuance of such
insurance for two years without the payment of
premiums is not germane. (Chairman Tilson, Sept.
13, 1919, p. 5343.)

Fortunately the Chair is not called upon to decide the merits of the proposed legislation. As Chairman of the Committee of the Whole House on the state of the Union it is his duty to construe the rules according to the best practice and precedents of the House.

As we all know, there is a tendency in this House and in the body at the other end of this Capitol to attach all sorts of legislation to bills in the form of what are called "riders." This has been carried to such an extent that sometimes matters entirely unrelated and incongruous are combined in the same bill, to the detriment of the law as to clearness of meaning and to the despair of persons trying to find the law after it is enacted.

Rule XVI, paragraph 7, provides that—

"No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

What is the subject under consideration? The subject under consideration is a bill amending the war-risk insurance act in several respects. * * * The subject under consideration is not "insurance," nor even "war-risk insurance," but the "granting of insurance by the United States upon the payment of premiums." In short, Article IV provides for insurance upon the payment of premiums. There is nothing in the law which would indicate that it was the intention of Congress to give insurance or to fix premium rates or payments, except by means of the American Experience Table of Mortality. * * *

What is the subject of the proposed amendment? "The term insurance in force shall be continued in force for two years without the payment of premiums." The object of this amendment, when stripped of all verbiage and reduced to its last analysis, is to give to the insured two years' free insurance.

In other words, the present law, as well as the bill under consideration, provides for insurance upon the payment of premiums, while the McCullough-Dowell amendment provides for insurance without the payment of premiums. Surely such a radical change of the policy of the Government presents a different subject within the inhibition of the rule.

In Hinds's Precedents (V, 5877) is cited a case in point:

"To a bill relating to the sale of the public lands an amendment proposing to give them to settlers was held not to be germane."

Clearly two propositions are related, but "two subjects are not necessarily germane because they are related."

The following have been held not to be germane:

"To a proposition relating to the terms of Senators, an amendment changing the manner of their election; to a general tariff bill, an amendment providing for the creation of a tariff board."

Many other cases can be cited, some of which the gentleman from New York [Mr. Snell] has referred to and from which he has read extracts. * * *

A case involving the same principle occurred during the present session.

On June 17, 1919, the gentleman from Iowa [Mr. Good] offered an amendment to Senate amendment No. 21, on the deficiency appropriation bill.

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The Senate amendment directed the Secretary of the Treasury to complete the hospital at Broadview, in Chicago, and also amended section 6 of the act approved March 3, 1919, creating an emergency fund of \$1,500,000 for the United States Public Health Service. Mr. Good's amendment restricted the Secretary of the Treasury as to taking further action under a number of sections of the above act.

The Speaker sustained the point of order, setting out his reasons in a carefully prepared ruling. As stated at the outset, the duty of the Chair is to so interpret the rules as to preserve as far as possible the best parliamentary practice of the House. By so doing orderly procedure in the House is established and maintained to the great advantage of the public business. If the present occupant of the Chair would follow the long line of precedents clearly established, he must of necessity sustain the point of order.

To a proposition to sell two battleships and build
a new battleship with the proceeds, a
§ 952. proposition to devote the proceeds to
building wagon roads was held not germane.
(Speaker Clark, June 23, 1914, 63d Cong., 2d sess.,
p. 10962.)

The Chair is ready to rule. There are three propositions pending here. All of them would have been out of order originally in the House. Part of them are in order by reason of this Senate amendment. They all agree to sell these battleships. When we get through selling them, then there is a dispute about what we are going to do with the money.

There are three propositions on that. The gentleman from Tennessee [Mr. Padgett] wants to build a new battleship, a dreadnaught, or super-dreadnaught, or something of the sort. The proposition of the gentleman from Illinois [Mr. Mann] is really to strike out. That is always in order—to strike anything out of anything. Now comes the gentleman from Alabama [Mr. Burnett] and wants to build wagon roads with this money. It does not make any difference whether building roads by the Government is a good thing or not. It might be a very meritorious proposition, the most meritorious that was ever offered in the House, but it has nothing on earth to do with a naval appropriation bill.

Whether you happen to like a particular ruling or not—that is, a ruling on a particular item—it is very much to be desired that the business of the

House be conducted in order. Now, let us see where we are on the road question. The pressure for an appropriation from the Federal Government to build wagon roads became so strong that the House created a Roads Committee. That is how it came to be created—because the pressure for Government aid in building wagon roads was so strong that the House could not resist it. The House created a special committee to take charge of this public wagon-road business, and under the lead of that committee the House authorized an appropriation of \$25,000,000 at the beginning of this session, or near the beginning of it. The Chair understands in a round-about sort of way that the Senate has cut down the amount to \$5,000,000, but that does not make any difference. It will have to go to conference.

Now, if you can build roads on the naval appropriation bill, you can take charge of the entire business of the Government under the naval appropriation bill. The point of order is sustained against the substitute of the gentleman from Alabama [Mr. Burnett], and the question is on the motion of the gentleman from Illinois [Mr. Mann] to strike out.

An amendment changing existing law, under the proviso of clause 2, Rule XXI, must
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 be authorized by the House committee having jurisdiction of the subject matter of such legislation. (Chairman Garrett, Jan. 16, 1912, p. 986.)

The Chair desired to hear the gentleman on the last proviso, but the Chair is inclined to believe that the suggestion made by the gentleman from Illinois [Mr. Mann] is a good one, and that he may rule on the whole thing now.

The language has been read from the Clerk's desk against which the gentleman from Pennsylvania made the point of order. The gentleman from Kentucky makes the point of order against the entire paragraph beginning with the words of the paragraph against which the gentleman from Pennsylvania makes the point of order. The point of order made, as the Chair understands, is that the provision is obnoxious to Rule XXI, clause 2, which reads:

"No appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench

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expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill, etc.”

It is insisted that this is new legislation which does not retrench expenditures in the sense and in the spirit of clause 2 of Rule XXI.

When what is called the Holman rule first appeared in the rules of the House of Representatives it was in the following form, as read to the committee by the Chairman a few moments ago:

“No appropriation shall be reported in such general appropriation bills or be in order as an amendment thereto for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress, nor shall any provision in any such bill or amendment thereto changing existing law be in order except such as, being germane to the subject matter of the bill, shall retrench expenditures.”

It was at the first session of the Forty-fourth Congress that the rule was adopted in that form. At the succeeding session of that Congress the rule was changed and appeared in the rules of the House in substantially its present form.

The only difference is that the rule as it now stands has in the proviso the language, following the word “committee”:

“Or any joint commission authorized by law or the House Members of any such commission.”

That continued to be the rule of the House until the rules were revised in the Forty-ninth Congress, when it was dropped. It was then restored to the rules of the House in the Fifty-second Congress, when it first appeared in the present form—that is, as to joint commissions, and so forth—and in this form continued in operation through the Fifty-second and Fifty-third Congresses.

Now, in the form that it appeared at the second session of the Forty-fourth Congress, the first part—not including the proviso—read:

“Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as, being germane to the subject matter of the bill, shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill.”

The language is specific. The language in the rule as it first appeared in the rules of the House at the first session of the Forty-fourth Congress was general in character, very like unto the language which appears now in the proviso to the rule, which proviso reads as follows:

"Provided, That it shall be in order further to amend such bill upon the report of the committee or any joint commission authorized by law, or the House Members of any such commission having jurisdiction of the subject matter of such amendment, which amendment, being germane to the subject matter of the bill, shall retrench expenditures."

The Chair is of opinion that the change in the rule from its original form, as adopted in the first session of the Forty-fourth Congress, was made for a purpose, and that it was the intention, and is now the intention, of the rule to fix the specific manner in which the Committee on Appropriations, reporting a proposition changing existing law, or any individual Member of the House of Representatives offering an amendment from the floor which will change existing law, may make that amendment in order; that is, it must be in one of three ways, by the reduction of salaries or by the reduction of the number of employees or by the reduction of the amount covered by the bill.

The Chair is of opinion that the Committee on Appropriations may not, under the rule, bring in as an integral part of an appropriation bill substantive legislation that, if introduced in the ordinary way in the House—that is, by bill or joint resolution presented by a Member—would go to another standing committee of the House for consideration and action; nor does the Chair think that any Member of the House may offer from his place on the floor any amendment carrying such substantive legislation, even though that legislation would retrench expenditures, unless that Member offer it as the report of a committee or as a member of a joint commission which would have jurisdiction of the subject matter under the rules of the House. In other words, the scope is limited and the outposts are fixed by the rule to which the Committee on Appropriations may go or to which the individual Member may go.

If the Chair be correct in this, what have we here? There is proposed here upon this bill substantive legislation, not a reduction of salaries, not a reduction of the number of employees, not perhaps a reduction of the amount covered by the bill, though the Chairman does not deem it necessary to pass upon that now; but even if it were all of those, and in order to carry it out it were necessary to enact new law, to create a new industrial enterprise, a new project not now provided for by law, would it be in order? The Chair thinks not, except it be upon a report of the committee which would have jurisdiction of the subject matter if introduced as an original bill in the House of Representatives, in this case the Committee on the District of Columbia.

The Chair is fortified in this opinion by a ruling which was made at the first session of the Fifty-second Congress. At that time the following provision in the Army appropriation bill, namely, that hereafter no money

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appropriated for Army transportation shall be used in payment for the transportation of troops and supplies of the Army "over certain lines of railroad which are indebted to the Government," was held not in order under this rule. That decision is as follows, and the Chair will ask the Clerk to read it.

The Clerk read as follows:

"The point of order made by the gentleman from Texas [Mr. Crain] is against the second provision on page 16 of the bill, which declares:

"That hereafter no money appropriated for Army transportation shall be used in payment of the transportation of troops and supplies of the Army over any of the nonbonded lines owned, controlled, or operated by the Union Pacific Railway Co. (including the lines of the Oregon Short Line and Utah Northern Railway Co.) or by the Southern Pacific Co. over lines embraced in its Pacific system.'

"Under the view taken by the Chair the relations between the Government and these railroad companies, as determined by the Supreme Court or otherwise, can not affect the decision of this point of order.

"The gentleman from Indiana [Mr. Holman] contends that this proposed new legislation is in order in an appropriation bill under the proviso of the second section of Rule XXI, which says:

"It shall be in order further to amend such bill upon the report of the committee having jurisdiction of the subject matter of such amendment, which amendment, being germane to the subject matter of the bill, shall retrench expenditures.'

"The Chair is of opinion that a motion of that kind should come officially from the committee having jurisdiction and can not be brought before the Committee of the Whole House on the state of the Union as an integral part of an appropriation bill reported by the regular Committee on Appropriations."

Bottoming his action upon the reasoning which the Chairman has endeavored to state and buttressed by the precedent which has just been read, the Chairman sustains the point of order made by the gentleman from Pennsylvania [Mr. Olmsted] and the gentleman from Kentucky [Mr. Johnson].

A provision in an appropriation bill requiring clerks in the classified service to work an increased number of hours proposes legislation not on its face reducing expenditures. (Chairman Crisp, Mar. 11, 1916, 64th Cong., 1st sess., p. 3977.)

The gentleman from Wyoming [Mr. Mondell] makes a point of order against section 6 of the bill, providing in substance that the clerks of the

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executive departments shall work eight hours a day. The gentleman from Wyoming declares that the section is legislation and changes existing law, and therefore, under the rules of the House, is not in order on an appropriation bill.

It is the practice, under the rules of the House, that legislation is not in order on an appropriation bill unless it comes within the exception known as the Holman rule, which is clause 2 of Rule XXI. Under that rule, in certain instances, legislation is in order. Clause 2 of Rule XXI provides:

“Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as, being germane to the subject matter of the bill, shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill: *Provided*, That it shall be in order further to amend such bill upon the report of the committee or any joint commission authorized by law or the House members of any such commission having jurisdiction of the subject matter of such amendment, which amendment, being germane to the subject matter of the bill, shall retrench expenditures.”

The Chair is of the opinion that section 6 of the bill under consideration does not retrench expenditures by the reduction of the number or salary of any officer of the United States. The Chair is also of the opinion that it does not, within the meaning of the rule, reduce the compensation of any person paid out of the Treasury of the United States, and the Chair is of the opinion that it does not reduce the amounts of money covered by the bill. So the amendment does not fall within any one of those three excepted classes.

Then the question arises that the Chair determine whether the amendment is in order under the proviso of the Holman rule. The gentleman from Missouri [Mr. Borland] and the gentleman from Wyoming [Mr. Mondell] both concede that the Committee on Appropriations is not a legislative committee. Therefore the Chair will not cite authority to that effect, although the Chair could do so.

In the opinion of the Chair, an individual Member can offer germane amendments, and if they fall within any one of the first three excepted classes the amendments are in order, even if legislation. But the Chair has ruled that in the opinion of the Chair the section in question does not come within any one of those three classes. The Committee on Appropriations, being a nonlegislative committee, has no more authority to insert as a part of a bill section 6 than any Member would have the right to offer said section 6 as an amendment on the floor of the House.

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Chairman Garrett on January 16, 1912, passing on an amendment to a provision brought in by the Committee on Appropriations, held that the Committee on Appropriations was not a legislative committee, and did not have jurisdiction of the legislative subjects that they incorporated in the bill, and therefore the section, not being authorized by a House committee or the members of a joint commission having jurisdiction of the subject matter, was out of order even if it retrenched expenditures, and he sustained the point of order, which ruling will be found in full in section 944 of the Digest.

Following that ruling Chairman Hull, of Tennessee, on December 20, 1913, ruled the same way, sustaining a point of order on the ground that the Committee on Appropriations was not a legislative committee, and therefore it was not in order for them to propose legislation, even though it might retrench expenditures.

The Chair does not feel that it is incumbent upon him to pass upon section 6 as to whether or not it would reduce expenditures. The Chair, however, is of the opinion that under the Holman rule the amendment must show that a reduction naturally follows to bring it within the purview of the rule.

The Chair does not believe that the opinion of some one that the amendment might reduce and the opinion of another that it might not is legitimate for the Chair to consider; but the Chair must determine from the amendment itself whether or not its natural consequence is to reduce expenditures.

As before stated, however, the Chair is not required to pass upon that, for the Chair is clearly of the opinion that any amendment that reduces expenditures, as authorized by the proviso of clause 2 of Rule XXI, to be in order under said Holman rule must come from a committee having jurisdiction of the legislative subject. The Committee on Appropriations in this instance not being a legislative committee was without authority to insert section 6 in the bill, and therefore the Chair sustains the point of order.

An amendment specifically requiring a reduction in the number of clerks to be employed in the classified service and also providing for an increased number of hours of labor is in order as a retrenchment of expenditure. (Chairman Crisp, Mar. 14, 1916, 64th Cong., 1st sess., p. 4075.)

The gentleman from Missouri [Mr. Borland] offers an amendment to be known as section 6 of the bill, the amendment providing:

"That the number of persons in the classified service authorized to be employed in the several executive departments and other executive establishments and the government of the District of Columbia shall be reduced by one-tenth on or before the 30th day of June, 1917, and in order that such reduction may be made without loss of service to the Government and to equalize the hours of work required of those in the classified employments of the United States it is made the duty of heads of the several executive departments and other executive establishments and the government of the District of Columbia to hereafter require, subject to the provisions and exceptions of section 7 of the legislative, executive, and judicial appropriation act for the fiscal year 1899, approved March 15, 1898, not less than eight hours of labor each day, except Sundays and days declared public holidays by law or Executive order: *Provided*, That the provisions of this section shall not apply to the classified employees of those branches of the public service in which such employees are now required to work eight hours a day."

To the amendment the gentleman from Wyoming [Mr. Mondell] makes the point of order that it is legislation, that it changes existing law, and therefore is not in order on an appropriation bill.

While it is true, under the general rules of the House, that legislation is not in order on an appropriation bill, under the rules of the present House there is an exception to that general rule, the exception being that an individual Member of this House can offer amendments providing for legislation on an appropriation bill if such amendments are germane to the bill and retrench expenditures of the Government in either of the following three methods: By the reduction of the number and salary of the officers of the United States, or by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of the amount of money covered by the bill. The individual Member, and non-legislating committees on all fours with individual Members, can propose germane legislation to an appropriation bill if it falls within either of those three excepted classes.

The Holman rule provides an additional method of legislating on an appropriation bill. The proviso to clause 2 of Rule XXI provides that legislation the natural consequence of which is to retrench expenditures is in order if it is proposed by a committee of the House having jurisdiction of the legislative subject of the amendment, or by a joint commission, or the House members of a joint commission authorized to deal with that legislative subject.

The proponent of the amendment in question contends that while it is legislation it is in order, because he contends that it falls within one of the excepted classes permitting an individual Member of the House to offer germane legislation. The proponent of the amendment contends that it re-

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duces the number of officers whose salaries are paid out of the Treasury of the United States.

The question, therefore, for the Chair to pass upon is to determine, first, if the amendment is germane; second, if it comes within one of the excepted classes; and, third, if the legislative part of the amendment is connected up with the proposition to reduce the number of salaries or officers paid out of the Treasury of the United States under which it is claimed the legislation is in order.

The bill before the House is the legislative, executive, and judicial appropriation bill, dealing generally with the salaries of officers and employees of the United States Government. The Chair is cognizant of the fact that there are some exceptions to that, notably the Agricultural Department, but in the main it is the appropriation bill which carries the salaries for the officers and employees of the Government. The amendment seeks to deal with a certain number of the employees of the Government, and the Chair thinks the amendment proposing a new section dealing with a certain class of Government employees is germane to the bill.

Now, the question arises whether the amendment of itself does reduce the number of officers paid out of the Treasury of the United States. The Chair is of the opinion that the amendment must show on its face that it does perform one of the functions required under the rule to make it in order. The Chair is clearly of the opinion that the language of the amendment using the word "shall" makes it mandatory upon the heads of the departments on or before June 30, 1917, to reduce the number of employees in their departments one-tenth, unless they are relieved of that duty by the proviso of the amendment. The amendment clearly reduces the salaries to be paid out of the United States Treasury, one of the exceptions under the rule authorizing legislation on an appropriation bill.

Now, the question arises, on the point of order made by the gentleman from Wyoming [Mr. Mondell], whether or not the amendment is divisible. The gentleman from Wyoming contends that if the first part of the amendment, reducing the number of clerks, is in order the last, or legislative part, is in no way connected with it and it is not in order. It is undoubtedly in order under the rules of the House to reduce the number of employees, or to move to strike out the number of employees, without the Holman rule. And the object of the Holman rule, as the Chair understands it, is to permit germane legislation under certain conditions.

Now, the Chair is clearly of the opinion that where an amendment is offered reducing the number of salaries paid out of the Treasury, coupled with legislation, that legislation, to be in order, must be connected up with or related to or logically follow from the part of the amendment reducing the number of employees or the amounts of money covered by the bill, and so forth.

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The Chair had the pleasure of being here when the rulings referred to by the gentleman from Wyoming [Mr. Mondell] were made, and the Chair has the greatest respect for the opinions of those who participated in that ruling; but the principal precedent cited is the one where an amendment proposed to reduce by one the number of clerks in the Court of Claims, coupled with a legislative provision repealing an act of Congress known as the Bowman Act. The Chair does not think that to reduce one clerk in the Court of Claims is in any way germane or connected with or that it logically follows or has any connection with the repeal of the Bowman Act.

Now, what does the amendment in question do? It provides that one-tenth of the employees of the various executive departments shall be discharged or reduced. The legislative part of the amendment provides that when this reduction is made the remaining clerks shall work eight hours instead of seven. The Chair can not escape the conclusion that if you reduce the number of clerks the business of the Government will require those remaining in the service to work longer hours. The Chair thinks the legislation naturally and logically follows the provision reducing the number of clerks.

Now, the Chair, as before stated, believes the Holman rule is intended to have a beneficial effect upon the Treasury of the United States. If the Chair is in doubt about whether or not an amendment is in order, he believes it is his duty to resolve that doubt against the point of order, for by so doing the Chair works no hardship upon anyone, but submits to the committee itself the privilege of passing upon the amendment. If the committee favor it, a majority can adopt it. If they are opposed to it, a majority can reject it.

The Chair believes the amendment in question comes clearly within the spirit of the Holman rule, and therefore the Chair, without any reference whatever to the merits of the proposition, overrules the point of order and holds the amendment in order. The Chair cites the following authorities in support of this ruling, namely, Congressional Record, Fifty-second Congress, first session, pages 4909-4920; Fifty-second Congress, second session, page 1690. Ruling by Hon. W. L. Wilson, of West Virginia, in Hinds' Precedents, volume 4, section 3887. Ruling by Chairman Lester, Hinds' Precedents, volume 4, section 3891. Ruling by Speaker Carlisle, Hinds' Precedents, volume 4, section 3892. Ruling by Judge Saunders, February 9, 1912.

Legislation is in order on an appropriation bill if
germane and reduces the amount covered by the bill. (Chairman Johnson
of Kentucky, June 21, 1912.)

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The bill as presented to the House contains this paragraph:

"Enlarging the Capitol Grounds: To continue the acquisition of the land described in the sundry civil appropriation act, approved June 25, 1910, and as authorized and prescribed in said act, for enlarging the Capitol Grounds, \$500,000: *Provided*, That in addition to the persons named in the said sundry civil act the Speaker of the House of Representatives shall be a member of the commission constituted to acquire said land and hereafter any three members thereof shall constitute a quorum and be competent to transact the duties devolving on them."

As to that paragraph the gentleman from Tennessee [Mr. Sims] reserved a point of order as to all that which comes after the word "*Provided*." The gentleman from Mississippi [Mr. Sisson] reserved and made a point of order to the entire paragraph. The Chair, in ruling, overruled the point of order to everything in the paragraph before the word "*Provided*" and sustained the point of order for everything that followed the word "*Provided*." When that ruling was made, that entire paragraph was then out of the bill for every purpose.

The gentleman from New York [Mr. Fitzgerald] then offered the following as an amendment to the bill:

"Enlarging the Capitol Grounds: To continue the acquisition of land described in the sundry civil appropriation act, approved June 25, 1910, and as authorized and prescribed in said act, for enlarging the Capitol Grounds, \$500,000."

Thereupon the gentleman from Mississippi [Mr. Sisson] offered as a substitute to that amendment repealing the act referred to in the amendment which authorized the appropriation of \$500,000.

The question is now raised upon a point of order as to whether the substitute offered by the gentleman from Mississippi is permissible under what is commonly known as the Holman rule, which is section 2 of Rule XXI, and which reads as follows:

"No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures, by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill: *Provided*, That it shall be in order further to amend such bill upon the report of the committee or any joint commission authorized by law or the House Members of any such commission having

jurisdiction of the subject matter of such amendment, which amendment being germane to the subject of the bill, shall retrench expenditures."

The Chair thinks that nothing which comes in the above rule after the word "*Provided*" need be considered in determining the point of order. The question hinges solely upon that part of the Holman rule which is quoted which comes before the word "*Provided*." The pertinent part of that section of the Holman rule reads as follows:

"Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill."

The first question which arises is: Can there be legislation in an appropriation bill under that part of the rule which I have just read? It seems quite evident to the Chair that under the rule there can be legislation, because the rule says—

"Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except"—

and so forth. That clearly implies that existing law may be changed because of the use of the words therein, "changing existing law."

If existing law can be changed, under the rule it must be germane, and so the next question arises as to whether or not the substitute offered by the gentleman from Mississippi [Mr. Sisson] is germane to the amendment offered by the gentleman from New York [Mr. Fitzgerald].

We are all familiar with the meaning of the word "germane," in its legislative sense at least, but inasmuch as a dictionary lies on the table before the Chair, the Chair has taken occasion to get the definition from that, and the definition that it gives is—

"Any close relationship to."

The amendment offered by the gentleman—

MR. FITZGERALD. Mr. Chairman, I can refer the Chair to a decision made on the 1st of April, 1910, that an amendment proposing to repeal a law is not in order as an amendment or substitute to an amendment modifying one section of the law. It was decided on April 1, 1910.

THE CHAIRMAN. The Chair would have preferred not to have had his chain of thought broken, but to have had the precedent presented to him later. Before finally ruling the Chair will look at the reference mentioned by the gentleman from New York. When interrupted by the gentleman from New York the Chair was dealing with the word "germane" and was about to read, and will now read, from the amendment offered by the gentleman from New York, which treats of the act approved June 25, 1910,

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which authorizes this appropriation. The substitute offered by the gentleman from Mississippi proposes to repeal the act which is mentioned in the amendment offered by the gentleman from New York.

The Chair is of opinion that there is such a close relationship between the two that the substitute offered by the gentleman from Mississippi in treating of the act of June 25, 1910, is germane to the amendment offered by the gentleman from New York in treating of the same act—that of June 25, 1910.

The Chair is, up to this time, of the opinion that under the Holman rule there is a right to change existing law provided it is germane; and provided, further, it meets any one of the other conditions set out in the rule. The Chair first rules that the substitute offered to the amendment is germane. Before the substitute can be held to be subject to a point of order, or that it is not subject to a point of order, other parts of the Holman rule must be applied to the item as tests. If existing law can be changed in an appropriation bill provided it is germane, it must have one or the other of the additional qualifications. It must, in one instance, in addition to being germane, retrench expenditures by the reduction of the number and salary of the officers of the United States. The substitute offered by the gentleman from Mississippi to the amendment does not meet that requirement of the rule. Next, in order that it may be in order the substitute offered by the gentleman from Mississippi must be a reduction of the compensation of any person paid out of the Treasury of the United States. It does not come under that requirement of the rule. The Chair is of the opinion, however, that it does come under the next requirement, which reads as follows:

“Or by the reduction of the amounts of money covered by the bill.”

The Chair first holds that existing law under the Holman rule can be changed, provided it is germane, and the Chair holds that it is germane. Further, that it is good provided it reduces the amount of money covered by the bill. The Chair holds that it does reduce the amount of money covered by the bill to the extent of \$500,000.

Now, as to the suggestion made by the gentleman from Kentucky [Mr. Sherley] that if the contention of the gentleman from Mississippi were correct all offices could be abolished. The Chair is not called upon to decide that point and will not do so; but, in passing, it may be remarked that there is a provision in the Holman rule for the reduction of the number and salary of officers of the United States. If the Chair were called upon to decide that point he would, as on the present occasion, decide it just as he has the point which is now raised.

The amendment offered by the gentleman from New York treats of the act approved June 25, 1910, which authorizes the expenditure of \$500,000 a year for the enlargement of the Capitol Grounds. The gentleman from Mississippi has offered a substitute for the repeal of that act. Now, the

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gentleman from Mississippi, in offering his substitute, did not refer to the act by its title and date of its approval, but he did more than that, he referred to it by its title, the date of its approval, and then quoted every word of the act, so it occurs to the Chair there is no escape under the conditions from the conclusion that the substitute is germane to the act. The Chair overrules the point of order, and in doing so agrees with the position taken by the gentleman from New York [Mr. Fitzgerald] in his contention upon a former occasion with the then presiding officer of the House.

In passing upon the point of order that a proposed amendment to a general appropriation bill constitutes new legislation, it is not within the province of the Chairman of the Committee of the Whole to consider contingencies which might automatically repeal existing law authorizing the legislation proposed in the amendment. (Chairman Crisp, Jan. 31, 1918, 65th Cong., 2d sess., p. 1650.)

The Chair is ready to rule. The gentleman from South Carolina [Mr. Lever] offers an amendment against which the gentleman from Wisconsin [Mr. Stafford] lodges a point of order, claiming that it is new legislation, and that therefore it is not in order on a general appropriation bill.

Under clause 2 of Rule XXI, no amendment changing existing law shall be in order upon an appropriation bill. Therefore the question presents itself to the Chair as to whether or not the proposed amendment is new legislation. Under the act "To provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products," approved August 10, 1917, there is a provision of law identical with the amendment proposed by the gentleman from South Carolina.

The gentleman from Wisconsin contends that the act of Congress that the Chair has just cited lasts only during the continuance of the war, which is an uncertain contingency, and that the Chair would not be authorized to hold the amendment is in accordance with existing law. The Chair is of the opinion that the only matter for the Chair to decide is whether the law is in existence at the time the Chair is to pass upon the amendment authorizing it, for any law may be subsequently repealed.

Section 3814 of Hinds' Precedents, volume 4, provides:

A paragraph in an appropriation bill reenacting verbatim an existing law is not subject to a point of order.

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On February 5, 1904, the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Morris Sheppard, of Texas, proposed the following amendment:

"Provided, That the purchase and distribution of seeds and plants by the Department of Agriculture shall be confined to such seeds as are rare, untried, and uncommon to the country, or such as can be or have been made more useful and more profitable by special breeding, or such seeds and plants as may be improved by transplantation from one part of the country to another."

Mr. Sydney J. Bowie, of Alabama, made a point of order that the proposed amendment involved legislation.

After debate, the Chairman said:

The Chair is ready to rule upon this amendment. If the Chair has made no mistake; it is a verbatim copy of the law as it now exists. That being the case, it has been held that while it is unnecessary and perhaps almost not good form, yet is not strictly subject to a point of order. It is simply reenacting a portion of the United States statutes.

The Chair is of the opinion that there is law authorizing the legislation proposed in the amendment and that the amendment simply proposes an appropriation to carry out existing law, and therefore the Chair overrules the point of order.

It is not enough that the provision reduces the number and salary of the officers of the United States or reduces the compensation of any person paid out of the Treasury, but it "must retrench expenditures" by doing that. (Chairman Sanders of Indiana, Dec. 9, 1922, 67th Cong., 4th sess., p. 257.)

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The Chair is ready to rule. This bill reported by the Committee on Appropriations, under the heading of Bureau of Engraving and Printing, has this paragraph:

The Secretary of the Treasury is directed, as soon as possible after the approval of this act and not later than September 30, 1923, to dispense with the use of not less than 196 hand plate-printing presses in the Bureau of Engraving and Printing and to substitute therefor not more than 58 power plate-printing presses, and hereafter he is authorized to print from plates of more than four subjects each upon power presses the fronts and backs of any paper money, bonds, or other printed matter now or hereafter authorized to be executed at such bureau; and the Secretary shall in the performance of the duty and exercise of the authority placed upon him by this paragraph, reduce the number of persons employed in the operation of plate-printing presses by not less than 218.

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To that paragraph the gentleman from Maryland [Mr. Zihlman] makes the point of order that it changes existing law and violates the provision of clause 2 of Rule XXI, which says:

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill.

Then there is an additional proviso which is not involved.

The gentleman from Illinois [Mr. Madden] does not dispute the proposition that the proviso changes existing law, but seeks to justify the paragraph upon the ground that it shows upon its face that it is a retrenchment in expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of the amounts of money covered by the bill.

The Chair in passing on this rule is governed by the face of the bill and the law and the rule.

The rule laid down by Speaker Kerr in this respect was as follows:

In considering the question whether an amendment operates to retrench expenditures, the Chair can look only to what is properly of record before him—that is, the pending bill, the specific section under consideration, the law of the land, so far as it is applicable, and the parliamentary rules and practice of the House; and beyond these he is not permitted to go in deciding the question.

The Chair takes it that no one will seriously contend that that is not the rule. The point of order is directed to the whole paragraph. Of course, if there is any part of the paragraph that is not in order, the paragraph must go out. It is all involved in one proposition, which is obviously an attempt at “retrenching expenditures” under the rule.

You will note by the language of the rule that it is not enough that the measure reduces the number and salary of the officers of the United States or reduces the compensation of any person paid out of the Treasury. It must “retrench expenditures” by doing that. The many rulings on this question are fairly uniform. They all hold that when, on the face of the bill, the proposed new legislation retrenches expenditures in one of these three ways the point of order should be overruled, and the rule is generally laid down that the construction should be liberal in favor of retrenchment of governmental expenditures.

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The noted parliamentarian, the late Mr. Mann, in arguing this question in a case which has not been cited here, but which the Chair thinks is very much in point, laid down what seems to me the rules governing the decision on this point of order.

There was an amendment offered which provided for a vast expenditure for an asphalt machine, and also provided in the same amendment that there should be a decrease in the expense of doing asphalt work. In discussing the different phases of the matter Mr. Mann made this statement:

The original Holman rule provided—

“Except such as being germane to the subject matter of the bill shall retrench expenditures.”

We put a limitation on that. It must retrench expenditures in certain ways now. It is not sufficient to say now that a proposition shall retrench expenditures or must retrench expenditures by the reduction of the amount of the salary of an officer, by the reduction of the compensation, or by the reduction of the amounts of money covered by the bill. I am not referring to the proviso yet. So, if an amendment was out of order under the original Holman rule it is out of order under this provision, because this is a mere limitation upon the original Holman rule.

While it is not necessary at this time to discuss the proviso in the Holman rule, because that question is not presented, I take it that there the same rule applies as to the retrenchment of expenditure under the original Holman rule, because now a committee is authorized, which has jurisdiction of the subject matter, to offer an amendment on an appropriation bill which shall retrench expenditures. But the basic ruling of all has been that of Speaker Kerr, that the retrenchment of expenditures could not be a matter of argument. It is not a matter for the Chair to determine whether the transfer of the Indian Office to the War Department is a retrenchment of expenditure. It is not for the Chair to determine whether the construction of an asphalt plant is a retrenchment of expenditure. That is an argument pure and simple. People may differ about that. The Chair can only act upon the proposition which is presented on the face of that proposition.

Now, coming to this provision, to which the point of order is directed: It directs the Secretary of the Treasury to substitute 58 power plate-printing presses for 196 hand plate-printing presses, and also to discharge not less than 218 employees. Of course it is admitted that it is going to require the expenditure of money to purchase the presses, but following the ingenious argument that the Government may already have the printing presses on hand, it seems to the Chair that the Chair is unable to determine as a matter of law that that will effect retrenchment of expenditures, so far as the face of the bill is concerned. It certainly may require the expenditure of a vast sum of money to buy printing presses. It may not, but it may require it. They are to be substituted for the others. There

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is going to be a change in the cost of the overhead with reference to printing presses. That is clear. The amount of that cost is entirely conjectural, is subject to argument, and depends upon extraneous matters not in the record. I asked the gentleman from Illinois [Mr. Madden] if there were 15 men discharged whether it would be subject to a point of order. I think if 5 men were to be discharged it clearly would not be in order, and the Chair is unable to go up to the point where he can say what number of employees to be discharged makes the provision in order. It would require the Chair to go out and try the question of fact, which depends on statements which might vary, and require the Chair to determine questions of fact, weigh evidence, and search the record in the hearing, which would be a dangerous precedent. Where one paragraph containing new legislation provides in one part for a discharge of employees, which will mean a retrenchment, and to bring about this particular retrenchment substantial expenditures will with reasonable certainty be made and the amount of those expenditures is not capable of definite ascertainment, the Chair is unable to hold that the net result will retrench expenditures. The Chair is of the opinion that this paragraph is subject to the point of order, and the point of order is sustained.

Thereupon an amendment was offered eliminating the provision requiring the additional expenditure and the Chair overruled the point of order and said:

The amendment offered by the gentleman from Illinois [Mr. Madden] reads as follows:

Hereafter the Secretary of the Treasury is authorized to print from plates of more than four subjects each upon power presses the fronts and backs of any paper money, bonds, or other printed matter, now or hereafter authorized to be executed at the Bureau of Engraving and Printing; and the Secretary shall, in the exercise of the authority conferred upon him by this paragraph, reduce the number of persons employed in the operation of plate-printing process by not less than 218.

The Chair is of opinion that the amendment comes within the ruling of Chairman Crisp, which holds that where the retrenchment is apparent upon its face the amendment is in order. The Chair overrules the point of order.

A limitation must not give affirmative directions,
must not impose new duties, and must
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directly limiting the appropriation. (Chairman
Frederick C. Hicks, Jan. 8, 1923, 67th Cong., 4th
sess., p. 1422.)

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The Chair, realizing the importance of this ruling due to the precedent it may establish, has given no little thought to it. The Chair at the outset thanks the gentleman from Connecticut [Mr. Tilson], an authority on parliamentary procedure, for his able argument and clear presentation of the case, both of which fortify the conclusions reached by the Chair. The Chair is cognizant of confusion in the rulings in cases somewhat akin to this one, and realizes that in considering questions of limitations as in determining questions of germaneness there is considerable latitude between what is clearly permissible and what is as clearly repugnant to the rule. The Chair feels that in traversing this twilight zone he is justified in leaning toward the side of conservatism in regard to admission of legislation on appropriation bills. In the last few years there has been a very perceptible increase in the amount of legislative provisions incorporated in bills reported by the Appropriations Committee. The growth of this practice, in the opinion of the Chair, is unwise and is not warranted by the rules or procedure of the House. It is probably due to the fact that, as formerly many of the standing committees had jurisdiction over both appropriations and legislation, a clear distinction of these separate functions was not made in the bills reported, which left the Appropriations Committee in the position of finding that many of the items for which it desired to appropriate were unauthorized. This made it incumbent upon the Appropriations Committee, in order to carry on its work, to devise these legislative limitations.

Under our rules the Committee on Appropriations can consider only questions of appropriations, the subjects of legislation and authorization being confined to the jurisdiction of standing committees constituted for that very purpose and equipped with facilities to conduct investigations. Feeling that each committee should be held strictly to the consideration of its own particular work, the Chair is of the opinion that too much latitude has been given in the employment of limitations, and that the practice of resorting to this method of securing, in an indirect way, legislation on appropriation bills has been abused, and extended beyond the intention of the rule. The Chair is therefore constrained to take the view that we should restrict rather than enlarge, limit rather than expand, the power of the Appropriations Committee in placing legislation upon appropriation bills.

The Chair asks the indulgence of the committee in making some observations on this mooted subject of limitations, and in doing so desires to thank the able parliamentarian for his assistance and suggestions.

Since Congress has the right to appropriate, Congress has the right to refuse to appropriate, even though the appropriation is authorized, and this may be done in two ways: First, by not appropriating for a certain purpose at all, and second, by denying the use of a part of an appropriation

for a certain purpose. This is the principle on which the theory of limitations is grounded and should always be kept in mind in construing a limitation.

To use the illustration of the late James R. Mann, of honored memory, Congress having the right to appropriate for red-headed men, may specifically deny the use of an appropriation for the payment of red-headed men. Therefore, while it is not in order to require the employment of red-headed men or even the payment of red-headed men, it is in order to deny the use of an appropriation for the payment of red-headed men, even though existing law permits the employment and payment of red-headed men.

But the misapplication and the difficulty in construing the rule has occurred when a limitation is accompanied by something additional in the nature of a further limitation or restriction.

For example, there is no difficulty in the following provision: "No part of this appropriation may be expended in the payment of red-headed men."

But take the following proposition: "No part of this appropriation may be used for the payment of any persons except red-headed men."

In construing the last example it is necessary for the Chair to look to the effect rather than to the form. Does the language merely deny the use of the appropriation or does it go further and require the employment of red-headed men? If existing law does not authorize the employment of red-headed men, or expressly prohibits the employment of red-headed men, the language clearly becomes not a limitation but becomes legislation making an appropriation for an unauthorized purpose and in addition proposes legislation permitting the employment of red-headed men contrary to existing law. But if the law authorizes the employment of red-headed men the language merely becomes explanatory of the recipient of the appropriation, and is in fact merely an appropriation for a certain purpose. Therefore, as a test in determining the legality of such language, the Chair may properly ask himself this question: "Would it be in order to make a direct appropriation for this purpose instead of denying the use of this appropriation except for the specified purpose?" If the question could be answered in the affirmative this particular class of limitations would be in order.

Approaching the point of order now before us, in the consideration of which the merits of the proposition are not under review, the Chair will cite a number of precedents that bear on the subject of limitations, quoting from Volume IV of Hinds' Precedents:

No. 3931. Legislation may not be proposed under the form of a limitation.

No. 3976. The language of limitation prescribing the conditions under which the appropriation may be used may not be such as, when fairly construed, would change existing law.

No. 3812. The enactment of positive law where none exists is construed as a "provision changing existing law," such as is forbidden in an appropriation bill.

No. 3967. A limitation is negative in its nature and may not include positive enactments establishing rules for executive officers.

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No. 3854. A proposition to establish affirmative directions for an executive officer constitutes legislation and is not in order on a general appropriation bill. Also a ruling of Chairman Towner, April 15, 1920.

Chairman Crisp, March 11, 1916: Limitations must not impose new duties upon an executive officer.

No. 3984. Where a proposition might be construed by the executive officer as a modification of a statute, it may not be held as such a limitation of appropriation as is permissible on a general appropriation bill.

No. 3927. A limitation may be attached only to the money of the appropriation under consideration and may not be made applicable to moneys appropriated in other acts.

No. 3957. The limitation must be upon the appropriation and not an affirmative limitation of official functions.

No. 3966. Limitations which directly, or indirectly, vest in any executive officer any discretion, or impose any duty upon the officer, directly or indirectly, in the expenditure of money, would be obnoxious. But (No. 3968) the House may provide that no part of an appropriation shall be used in a certain way even though executive discretion be thereby negatively restricted.

No. 3936. A provision proposing to construe existing law is in itself a proposition of legislation and, therefore, not in order on an appropriation bill as a limitation.

No. 3936. The fact that a paragraph on an appropriation bill would constitute legislation for only a year does not make it admissible as a limitation.

No. 3936. As an appropriation bill may deny an appropriation for a purpose authorized by law, so it may by limitation prohibit the use of money for part of the purpose while appropriating for the remainder of it.

No. 3929. A limitation must apply solely to the present appropriation and may not be made as a permanent provision of law.

No. 3942. While it is not in order to legislate as to qualifications of the recipients of an appropriation, the House may specify that no part of the appropriation shall go to recipients lacking certain qualifications.

In section 3935, page 629, of Hinds' Precedents, Volume IV, is a ruling by Speaker Cannon, which has been referred to and which the Chair feels covers the point under consideration. The language is clear and specific, and in view of Mr. Cannon's approaching retirement from Congress after a long and distinguished career, the Chair is glad to refer to it in this instance:

The merits of the proposition are not involved in the point of order. What is the object of the motion and of the instruction? If it does not change existing law, then it is not necessary. If it does change existing law, then it is subject to the point of order. Much has been said about limitation; and the doctrine of limitation is sustained upon the proposition under the rule that, as Congress has the power to withhold every appropriation, it may withhold the appropriation upon limitation. Now, that is correct. But there is another rule, another phase of that question. If the limitation, whether it be affirmative or negative, operates to change the law or to enact new law in effect, then it is subject to the rule that prohibits legislation upon a general appropriation bill; and the Chair, in view of the fact that the amendment would impose upon officials new duties as to purchasing canal supplies, has no difficulty in arriving at the conclusion that the instructions are subject to the point of order for the reasons stated.

In viewing propositions of a legislative character the Chair feels we should look to the substance and not to the form in which it is presented. In the case before us what does the proviso propose? Does it impose a simple restriction on the expenditure of funds? No. Does it stipulate that the use of the funds is conditional upon the possession by the recipients of certain qualifications or distinctions? No. It goes much further, for by the use of the words "until" and "unless" in connection with certain things to be done, it implies—yes, asserts—that these activities must be undertaken before the appropriation becomes available. This is a direction to officers and imposes new duties upon them which is repugnant to our practice. By requiring the court to perform functions which are not now required, it clearly implies a change of law, otherwise it would be futile to suggest it. This is legislation under the guise of a limitation which is contrary to our procedure.

As a general proposition the Chair feels that whenever a limitation is accompanied by the words "unless," "except," "until," "if," "however," there is ground to view the so-called limitation with suspicion, and in case of doubt as to its ultimate effect the doubt should be resolved on the conservative side. By doing so appropriation bills will be relieved of much of the legislation which is being constantly grafted upon them and a check given a practice which seems to the Chair both unwise and in violation of the spirit, as well as the substance, of our rules. Without endeavoring to lay down any hard and fast rule, the Chair feels that the following tests may be helpful in deciding a question of order directed against a limitation, first having determined the powers granted or the duties imposed by existing laws:

Does the limitation apply solely to the appropriation under consideration?

Does it operate beyond the fiscal year for which the appropriation is made?

Is the limitation accompanied or coupled with a phrase applying to official functions, and if so, does the phrase give affirmative directions in fact or in effect, although not in form?

Is it accompanied by a phrase which might be construed to impose additional duties or permit an official to assume an intent to change existing law?

Does the limitation curtail or extend, modify, or alter existing powers or duties, or terminate old or confer new ones? If it does, then it must be conceded that legislation is involved, for without legislation these results could not be accomplished.

If the limitation will not fairly stand these tests then in my opinion the point of order should be sustained. Applying in the present instance the standards set forth, the judgment of the Chair is that the point of order is well taken and the Chair sustains it.

IMPORTANT DECISIONS.

§ 959.

Under clause 4 of Rule XXI, point of order should be directed to the item of appropriation
§ 959. in the bill and not to the act of reporting the bill. (Speaker Gillett, Jan. 7, 1921, 66th Cong., 3d sess., Record, p. 1181.)

On January 7, 1921, Mr. James R. Mann, of Illinois, rose to a point of order, which he stated as follows:

"Mr. Speaker, I make a point of order that the bill H. R. 15163, on the Union Calender No. 373, reported from the Committee on Indian Affairs December 17, 1920, is erroneously on the calendar. The committee had not authority to report the bill. I make the point of order for the purpose of having a decision of the Speaker construing the new rule in reference to reporting a bill which carries appropriations. The rule provides, section 5, Rule XXI:

"No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, nor shall an amendment proposing an appropriation be in order during the consideration of a bill or joint resolution reported by a committee not having such jurisdiction. A question of order on an appropriation on any such bill, joint resolution, or amendment thereto may be raised at any time.

"The first part of that rule apparently prohibits a committee from reporting a bill which carries an appropriation. The latter part of the rule would seem to indicate that though a bill had been reported, a question of order on the reporting of an appropriation might be raised as to the part of the bill providing for the appropriation. The bill on the calendar is a bill which as introduced appropriated \$100,000. The Committee on Indian Affairs, observing the spirit of the new rule, reported the bill with an amendment striking out that appropriation and inserting an authorization. Of course, that evidences the spirit of the committee. It does not affect, however, the question as to whether they had the right to report a bill, because the bill does carry an appropriation. The amendment proposed by the committee does not change the status of the bill as reported to the House, because the amendment might or might not be agreed to by the House. I call this to the attention of the Speaker. I do not know what his view may be upon the question. I only raise it for the purpose of having a construction, after some consideration by the Speaker, so that the Speaker shall decide it and not have it left to conflicting decisions of chairmen in the House. My own view is that the point of order is not good."

After debate the Speaker overruled the point of order and said:

"The Chair has given a good deal of thought to this question ever since the rule was adopted, because clearly there are two different interpretations which could be given to the language of the rule. The Chair has tried to come to a conclusion by determining which interpretation would better facilitate the business of the House and would be more in accord with the purposes which the Chair thinks were intended by the rule. At first blush, the reading of the rule would make the point of order applicable. It says:

"No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction."

The committee in this case, as the gentleman suggested, acted in accord with the spirit of the rule by offering an amendment striking out the appropriation. And if the committee could change the bill and report the bill without the appropriation that would strictly comply with the rule, but a committee only has jurisdiction to report the bill as it originally was, with an amendment. So the bill still remains with the appropriation in, despite the suggestion of the committee to amend by striking it out. A point of order is not prevented by the amendment which the committee has adopted. So this offers the plain case of whether a point of order lies against a bill carrying an appropriation and reported by a committee which has no appropriating jurisdiction. That clearly does violate the language of the first line of the rule. At the same time there is clause 2 of Rule XXI, which has long been interpreted in the House and which provides that—

"No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law—

"And so forth. That is a rule of long standing, and is the direct converse of this. That forbids the Committee on Appropriations to report legislation, and this forbids a legislative committee to report appropriations.

"That has been construed to mean that the point of order should be made not against the bill itself but against the item in the bill; and in the last clause of the new rule it is provided that a question of order on an *appropriation* in any such bill may be raised at any time, which seems to indicate that the intention was that the point of order should be raised against the appropriation.

"This is in accord with the long practice of the House on appropriation bills, and so it seems to the Chair that the purpose of the rule—to prevent legislative committees from reporting appropriations—will be effected by ruling that the point of order lies against the item of appropriation, and not against the reporting of the bill. If the committee had reported an amendment striking out the appropriation and that amendment should be

IMPORTANT DECISIONS.

§ 959.

defeated, as the gentleman from Wyoming [Mr. Mondell] suggests, the point of order could still be made against the appropriation, so that the appropriation would go right out.

"It seems to the Chair that in that way the purpose which was intended—to prevent appropriations in legislative bills—would be entirely secured, and in that way we should also be operating along the lines we have been accustomed.

"The Chair recognizes, however, that either interpretation could be made, and the Chair has no pride of opinion at all in the matter. He would be perfectly content to have his ruling set aside if the House thinks the other way would be better for the business of the House. But for the sake of establishing a course of action the Chair will overrule the point of order and hold that the point of order must be made to the appropriation itself."

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